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ADMINISTRATIVELY CONFIDENTIAL

WATER RESOURCES POLICY REFORM

Presidential Review Document

April 27, 1978

ADMINISTRATIVELY CONFIDENTIAL

Prepared by:

Department of Interior
Office of Management and Budget
Council on Environmental Quality

TABLE OF CONTENTS

| | <u>PAGES</u> |
|---|--------------|
| I. INTRODUCTION | 1 |
| II. BACKGROUND | 2 |
| III. NATIONAL AND REGIONAL WATER POLICY ISSUES | 4 |
| A. Water Supply | 4 |
| B. Flood Control | 4 |
| C. Navigation | 5 |
| D. Hydroelectric power | 6 |
| E. Recreation | 6 |
| F. Fish and Wildlife | 7 |
| IV. STATE WATER POLICY CONCERNS | 8 |
| V. FEDERAL WATER POLICY PROBLEMS AND NEEDS | 10 |
| A. Planning and Evaluation Deficiencies | 10 |
| B. Lack of Emphasis on Water Conservation | 10 |
| C. Adverse Environmental Impacts | 10 |
| D. Inequitable Sharing of Costs | 11 |
| VI. REVIEW OF PROJECT BACKLOG | 12 |
| A. Construction Activity Already Underway | 12 |
| B. Unstarted Separable Units of Large Projects on Which Some Construction Has Begun | 12 |
| C. Projects Which Are Authorized But Construction of Which Has Not Yet Begun | 12 |
| D. Projects Currently Being Planned (Not Yet Authorized) | 13 |
| E. Projects Where Planning Has Not Yet Begun | 13 |
| VII. POLICY REFORM PROPOSALS: BASIC OBJECTIVES | 14 |
| VIII. SPECIFIC REFORM PROPOSALS | 15 |
| IX. IMPROVED PLANNING AND REVIEW PROCESS | 16 |
| A. Principles and Standards | 16 |
| B. Discount Rate | 18 |
| C. Presidential Project Selection Criteria | 19 |
| D. Independent Water Project Review | 20 |

| | <u>PAGES</u> |
|---|--------------|
| X. NEW EMPHASIS ON CONSERVATION | 23 |
| A. Conservation Pricing for Federal Projects | 25 |
| 1. Pricing of Irrigation Water | 25 |
| 2. Pricing of Municipal and Industrial Water and Electric Power | 28 |
| B. Modification of Federal Programs | 29 |
| 1. Federal Technical Assistance | 29 |
| 2. Modification of Federal Agricultural Programs | 30 |
| 3. Modification of Federal Housing and Community Development Programs | 31 |
| C. Assistance to States | 31 |
| XI. IMPROVED ENVIRONMENTAL PROTECTION | 32 |
| XII. COST-SHARING | 34 |
| Option 1: State 10% Front-End Financing and Increase Non-Federal Contribution to Flood Protection | 35 |
| A. Ten Percent State "Front-End" Financing | 35 |
| B. Modification of Cost-Sharing for Flood Protection | 37 |
| Option 2: Joint Financing at Uniform 25 Per- cent Local Cost-Share | 38 |
| Treatment of Soil Conservation Service Projects | 40 |
| XIII. ENHANCED FEDERAL-STATE COOPERATION IN WATER MANAGEMENT | 42 |
| A. Assistance to States for Water Conservation and Planning | 42 |
| 1. Planning Grants | 42 |
| 2. Technical Assistance for Water Conser- vation | 43 |
| 3. Encourage States to Develop Efficient Procedures for the Sale of Water Rights Within a State | 43 |
| B. Federal Cooperation with States to Resolve Groundwater Problems | 45 |
| C. Federal-State Cooperation Regarding Instream Flow Policy | 45 |

| | <u>PAGES</u> |
|--|--------------|
| XIII. (cont'd.) | |
| D. Technical Assistance in Planning and Gathering of Data | 46 |
| E. Federal Reserved Water Rights | 47 |
| 1. Federal Reserved Water Rights Pertaining to Public Lands | 48 |
| 2. Indian Reserved Water Rights | 49 |
| XIV. POTENTIAL RECOMMENDATIONS FOR NEW STARTS | 51 |
| XV. IMPACTS OF RECOMMENDATIONS | 52 |
| XVI. ANALYSIS OF BUDGET COSTS | 54 |
| XVII. SUMMARY | 55 |
| XVIII. AGENCY VIEWS | 57 |

I. INTRODUCTION

I. INTRODUCTION

During the course of the water resource projects review conducted last year, it became evident that policy changes would be necessary to assure that public works projects offered for authorization and funding in the future would meet acceptable standards. Therefore, in your Environmental Message of May 23, 1977, you directed the Office of Management and Budget, the Council on Environmental Quality, and the Water Resources Council "to conduct in consultation with the Congress and the public, a review of the present Federal water policy." You further stated that "... we need comprehensive reform of water resources policy, with water conservation as its cornerstone."

In response to that directive, the policy review was undertaken with the establishment of seven inter-departmental task groups under the supervision of a policy committee composed of officials of the Department of the Interior, the Office of Management and Budget, and the Council on Environmental Quality. Policy options papers were published in the Federal Register for public comment and public hearings were held in nine cities throughout the Nation.

Many discussion sessions were held with representatives of the States and Governors, with public interest organizations, and with Congressional staff. Senior Federal agency officials have twice reviewed and commented on consolidated draft options papers. The result has been a thorough exchange of views and refinement of the policy options through this public and agency participation and consultation process.

II. BACKGROUND

A water policy review has been carried out in response to the directive contained in your Environmental Message last May. Federal water programs administered by some 25 different Federal agencies have been examined.^{1/} The water-related planning, construction, maintenance, and grant and loan program activities of these agencies are currently supported by more than \$5 billion per year in Federal funds. EPA's water pollution control program is funded by an additional \$5 billion, but is not affected directly by the policies recommended in this review.

The analysis and recommendations which follow concentrate most heavily on the construction and related activities of the Corps of Engineers, the Bureau of Reclamation, the Tennessee Valley Authority, and the Soil Conservation Service. These water development programs represent about 75 percent of the \$5 billion water resource program budget noted above. The activities of these agencies currently are directed toward the following missions: (1) water supply for irrigation and municipal and industrial use; (2) flood control; (3) commercial navigation; (4) hydro-electric power; (5) recreation; and (6) fish and wildlife mitigation.

Considerable analysis was completed on water consumption and efficiency throughout the United States. Agricultural, industrial and municipal water consuming sectors were evaluated in terms of consumption trends, prices paid for water, efficiency in use and supply availability. Only a few small Federal programs in Agriculture and Interior were directed at conservation, while many other programs encouraged consumption.

1/ Government reorganization issues are not addressed in this paper. Those issues will be presented to you as part of the PRP Natural Resources Reorganization Project. Liaison with the PRP was maintained throughout the water policy review. DPS and PRP have also been working with the Army (Civil Works) to identify alternate uses of the capabilities of the Corps of Engineers. This project and its relationship to natural resources reorganization issues will be presented in a separate memorandum.

The policy reform proposals which follow devote substantial attention to methods for improved Federal-State cooperation in meeting water-related needs and problems.

Under current law and administrative procedures, the activities of the major water project construction agencies must be directed toward both net National economic development and environmental quality objectives. While there have been National benefits from project construction, on some projects there have also been substantial environmental losses and major benefits have been captured by a limited number of beneficiaries. In recent years, controversy has increased over whether many of the activities of these agencies in fact meet National economic and environmental standards, and whether Federal monies spent by these agencies are effectively targeted toward the most pressing National water needs.

III. NATIONAL AND
REGIONAL ISSUES

III. NATIONAL AND REGIONAL WATER POLICY ISSUES 4

A. Water Supply

Federal construction activities to provide water supplies for agricultural, municipal and industrial purposes have been and continue to be of greatest regional importance in the West. Available supplies of water have diminished in relation to demands generated by growth in the agricultural, energy, municipal and industrial sectors. As a result, Federal activities in Western States have become an increasing source of controversy among both proponents and opponents of water project construction. In the face of mounting competition for limited water supplies, both State and Congressional representatives from the West, have frequently attempted to place responsibility for real and potential water shortages upon Federal reluctance to endorse any new water storage and distribution projects. In fact, all levels of government and the private sector must recognize that our supply of water is not infinite. Conservation offers one means of effectively alleviating a portion of the water supply problems of parts of the Western States. Conservation by itself will not be able to meet future demands and achieve a balance in certain parts of the West. Hence, the government should continue to help finance water projects that are safe, economic and environmentally sound.

Other parts of the country, mainly urban areas, may also face water supply problems. Governors of several Northeastern States have already begun calling for Federal measures ranging from planning and technical assistance to major new grant programs to repair or replace aging municipal water supply systems.

B. Flood Control

The Corps of Engineers has been providing flood-control protection to communities and agricultural interests throughout the Nation for years by constructing dams, levees and drainage projects. Bureau of Reclamation projects also provide flood-control storage in conjunction with other project purposes. The Soil Conservation Service finances a flood-control program in upstream watersheds, consisting mainly of small dams and channelization works. The peak of the Corps' construction program occurred 20 or 30 years ago when most of the larger dams on the major river systems were constructed. In

constant dollars, the Corps' construction program is substantially smaller than it was 10 years ago. Prospects for the future indicate still further declines. There still is substantial interest by local officials and business firms in Corps flood control projects, particularly in the lower Mississippi Valley and the Gulf Coastal States where a substantial amount of Corps construction funding has been concentrated in recent years. However, some Federal projects such as levees and channelization increase flooding problems. Apart from the mainstream Mississippi Valley levees, which provide protection to such cities as New Orleans and St. Louis, many of these projects involve drainage of swamp lands to render them suitable for agricultural use. There is strong environmental opposition to these drainage programs. However, they still enjoy substantial support from farmers and developers in the Southeast.

C. Navigation

Beginning with minor assignments in 1824, the Corps has become the principal agency responsible for maintaining the Nation's major rivers and harbors (including the Great Lakes) for commercial navigation, and developing a vast inland waterway system, primarily in the Mississippi-Ohio-Missouri Rivers and certain of their tributaries.

Today the predominant interest of regions affected is not primarily in further additions to inland waterway systems, but rather in the deepening of major coastal harbors and the replacement of older locks and dams which are in some cases reaching capacity. This replacement program (e.g., Locks and Dam 26) is viewed as critical by potential beneficiaries in affected regions and has considerable State support. The program is strongly opposed by both environmental and rail advocates, who argue that Federally-subsidized expansion of navigation system capacity is objectionable on both economic and environmental grounds.

Past efforts to recoup some of these costs by user charges have been unsuccessful despite the support of environmental groups and railroads. Your current support of the user charge principle in legislation pending in the Congress appears likely to achieve some measure of success for the first time in history.

The Locks and Dam 26 court decision established the legal and Congressional precedent that replacement projects

which significantly expand system capacity require separate and new authorization by the Congress. This case provides an opportunity to apply tougher planning standards and cost-sharing rules to future replacement projects on the upper reaches of both the Ohio and Mississippi Rivers.

D. Hydropower

Hydropower is particularly important in the Pacific northwest, where it provides well over half the region's supply of electricity. Hydropower is of relatively minor importance in other regions of the Nation which rely on thermal energy sources. In the Tennessee Valley for instance, TVA now generates less than 10% of its power from hydro sources. In all parts of the country, including the Northwest, almost all feasible and environmentally acceptable large, multi-purpose dams have been built. A primary interest is in obtaining Federal funds to install additional generating capabilities at existing dams. Some interest has been expressed recently in the possibility of installing generating units in existing small dams throughout the country. An authorization of \$300 million has been included by Congress in the pending National Energy Plan legislation for making Federal loans for small hydropower development. However, it is not a major water policy problem at present.

E. Recreation

Many dams originally constructed for flood control or other purposes today provide primary benefits in the form of recreation. Recreation was not recognized until 1965 as a valid Federal project purpose. Support for many water projects in recent years has come in large part from local interests seeking recreational lakes, ("flat-water recreation" benefits). Indeed, visitors at Corps of Engineers and Bureau of Reclamation reservoirs exceed visitation at our national parks. Many states -- particularly in the South and Southwest -- have been pressing for additional Federal investment in recreational facilities at Corps and Reclamation lakes. They also support recreation even though in some cases there are conflicts with other uses such as flood control or hydropower. However, there is considerable controversy over the projected recreation benefits from numerous multi-purpose projects now in the planning and construction stages. Some critics argue that these benefits are inflated and

fail to reflect losses of existing forms of water-based recreation; others question whether Federal agencies should continue to promote and subsidize this type of recreation versus demands for inner city and other forms of recreation.

F. Fish and Wildlife

Under the Fish and Wildlife Coordination Act and individual authorizations, fish and wildlife resources enhancement and mitigation are necessary components of water resources projects, to offset losses due to the project. Fish and wildlife purposes are accomplished through the participation of Federal and State fish and wildlife agencies in the planning process. However, basic differences in evaluation of potential losses and benefits often result in unresolved differences. The most obvious differences seem to occur on authorized projects, where a desire is often expressed to expand or otherwise change the approved mitigation features beyond the limits of the authorizing legislation and existing contracts with other project beneficiaries. There are also occasions when authorized mitigation measures are either not undertaken by the construction agency or are delayed while other project features are completed. This inaction is seen as a lack of commitment to mitigate for losses.

Mitigation of fish and wildlife losses takes such forms as: modification of project features, construction of facilities, improved management of project lands, the acquisition of land that would not otherwise be purchased for the project, maintenance of minimum streamflows, and operation of reservoirs for downstream temperature control.

IV. STATE CONCERNS

IV. STATE WATER POLICY CONCERNS

Throughout the water policy review process, the States have requested and have been afforded an opportunity to provide substantial input regarding both State needs and policy recommendations. State representatives, at the request of the National Governors Association, commented on the options of the seven water policy review task forces. Administration officials have met several times with the National Conference of State Legislators, and other official State and local groups. In addition to your own meeting with State and other officials in Denver, Secretary Andrus and his representatives have consulted repeatedly with interested governors on the progress of the review. The Vice President and Secretary Andrus met with the Western Governors in January on this and other issues.

You have publicly expressed your desire to meet once more personally with interested governors prior to any final decision.

State water problems -- as articulated by governors and their representatives -- vary widely among regions as indicated below. But there are several common concerns that are expressed by almost all States. Specifically, they maintain that:

- States now have and should have primary authority and responsibility for water management. This is an overriding theme on which there is virtually unanimous State agreement. It is a theme which you, the Vice President and Secretary Andrus have explicitly endorsed in your meetings with governors and other interested parties. While endorsement of the theme is unanimous, there are differing interpretations of its meaning. While it is clear that State water rights and allocation decisions fall within the concept, some States would argue that the Federal government should have no influence on water decisions except to provide funding. However, the Federal government, under the Water Pollution Control Act and Safe Drinking Water Act, has statutory responsibilities for water quality, and Federal projects themselves affect water quality and quantity management. In addition, the Federal government has reserved water rights and is trustee for Indian water rights. Thus, there is a "gray area" of extremely controversial issues involving State-Federal relationships, where the real question is not rights but

relative responsibilities. State officials have attached special significance to the pledges made at those sessions that the Administration's water policy reform recommendations will in no way "preempt" or interfere with State water rights.

- The States should have increased input with respect to Federal water policy. Federal policies should be consistent with State needs and plans.
- Federal planning mechanisms should be modified to provide consistent ground rules for States to rely on in their planning and the opportunity for input into Federal decision-making. Federal financing and cost-sharing policies should be simplified and revised to eliminate inconsistencies and biases.
- In the West, there is a special concern about threats to State water rights through exercise of Federal reserved water rights, and Indian water rights. These States have expressed a strong desire for quantification and adjudication of these rights as a first step toward resolution of this highly complex and controversial matter.

In addition, while not explicitly stated by most governors or State officials, many of them tend to view the current policy effort with great suspicion, particularly in the context of the water project recommendations of last year.

The various Federal water programs have produced many benefits to the Nation since their beginnings many years ago. Recently however, these programs and individual projects have encountered increasingly serious criticisms on environmental, economic, safety and other grounds. The following is a brief description of what the water policy review has identified as the areas in greatest need of improvement.

A. Planning and Evaluation Deficiencies

The Federal planning and evaluation system requires that project benefits exceed costs as a condition for authorization. An elaborate methodology has been developed for cost/benefit estimation, but it is not applied uniformly by the agencies. There are wide variations in the techniques of calculating benefits and costs, including double counting of benefits, and inadequate analysis of non-structural alternatives. Because of the length of time between design, authorization and construction, many projects now ready for construction funding were evaluated and authorized under outdated economic data and criteria.

B. Lack of Emphasis on Water Conservation

Based on analysis of all 106 watershed regions in the U. S., we have determined that severe water supply/demand imbalances exist in 21 Western subregions, and may be developing by the year 2000 in 18 additional Western subregions. In addition, although data are limited, urban areas in many parts of the country are facing expensive solutions to water supply problems.

Water conservation has not been emphasized in Federal water programs and in some cases the Federal government has created disincentives to conservation, for example, by charging very low rates for irrigation water. A number of opportunities for encouraging water conservation were identified during the review.

C. Adverse Environmental Impacts

The environmental problems associated with water projects are of a much larger scope than the occasional "endangered species" controversies which have received heavy press coverage. For example, flood control and navigation projects have eliminated several million acres of

productive agricultural and forest land. In the past, agencies were not explicitly required to assess environmental values. Current statutes require an explicit and detailed analysis of environmental impacts. However, in many cases the analysis has been inadequate. Environmental mitigation funds have not been available concurrently with project construction funds. Mitigation at times gets token funding at best.

D. Inequitable Sharing of Costs

The formulas now used to determine the non-Federal contribution to water resource projects are inadequate. Formulas differ from one purpose to another, from one agency to another, and even within discrete programs from planning to implementation to operational phases of individual projects. We found over 185 cost-sharing rules among the agencies surveyed. This makes certain types of Federal programs and projects more attractive than others to non-Federal interests and encourages "shopping" among agencies for the best deal rather than the best project. It discourages careful resource management by local and State governments and results in heavy public subsidies to specific industries and individual beneficiaries at the expense of the general taxpayer. The subsidies are particularly large for major irrigation projects, which usually require non-Federal interests to furnish or pay back less than 20 percent of the actual project costs. At the present time, an even lesser percentage of navigation and flood control costs are borne by non-Federal interests.

VI. REVIEW OF THE PROJECT BACKLOG

There are about 1,900 Federal water projects in various stages of planning and construction, of which 1,280 are currently authorized for construction. Virtually all of these authorized projects were conceived and justified under rules which are now obsolete -- yet these same projects will continue to dominate the Federal water resources construction budget for at least the next decade. Your policy reforms will have little immediate impact unless they apply to at least a substantial portion of these authorized projects; however, the political repercussions of such application could be substantial.

Therefore, each of the major reform proposals would apply to distinct categories of projects. The universe of projects can be sorted into the five categories below. The costs stated are Federal costs only.

A. Construction Activity Already Underway

This category of projects would include a total of 783 projects with an estimated cost to complete of about \$20 billion (30 Bureau of Reclamation projects at \$8.1 billion, 233 Corps projects at \$12.1 billion, and 520 SCS projects at \$0.2 billion). This category of projects has by far the strongest support and was subjected to intensive Administration review as part of the project-by-project evaluation conducted last year.

B. Unstarted Separable Units of Larger Projects on Which Some Construction Has Begun

This category includes six separable units of basin-wide or State-wide projects in the Bureau of Reclamation at a total cost of \$1.5 billion and 21 projects in the Corps costing \$0.6 billion. These units are features of projects included in category A above. Project sponsors will undoubtedly maintain that these separable features should be protected from changes in policy.

C. Projects Which Are Authorized, But Construction of Which Has Not Yet Begun

This category of 497 projects at an estimated cost of \$13.2 billion (17 in the Bureau of Reclamation at a

total estimated cost of \$1.4 billion, 254 in the Corps at \$10.8 billion, and 226 in SCS at \$1 billion), includes both newly authorized projects as well as those authorized more than 10 years ago. The recently authorized projects still enjoy Congressional and regional support.

There are 271 Corps projects considered "inactive" because they were authorized so long ago. The criteria under which they were evaluated are no longer valid.

D. Projects Currently Being Planned (Not Yet Authorized)

There are now 90 projects in the Bureau of Reclamation, 323 in the Corps, and 199 in SCS in the planning stages. The costs and scope of most of these projects are undefined.

E. Projects Where Planning Has Not Yet Begun

This category is of undefinable size since it includes all projects in the future. These projects will be affected by all of your reforms.

Summary

For the purposes of this report, the term "backlog" refers to those authorized projects not yet under construction, and to the unstarted separable units of larger authorized projects (categories B and C above), which comprise about 500 projects that would cost about \$15.4 billion to complete. The projects not yet authorized for construction (categories D and E above) will be affected by all of your reforms.

VII. BASIC OBJECTIVES

VII. POLICY REFORM PROPOSALS: BASIC OBJECTIVES 14

The following objectives are intended to meet the problems described above.

- Improved planning and management of Federal water resource programs: improvements are suggested to introduce greater efficiency and objectivity into the project planning and evaluation process.
- New emphasis on water conservation: several Presidential actions are presented which address specific needs in critically water-short areas as well as the need to encourage water conservation nation-wide.
- Increased environmental quality benefits: recommendations are made to require more explicit consideration of environmentally preferable alternatives during project planning and to obtain more effective, cooperative management of the quality and quantity of ground and surface waters by Federal and State governments.
- More equitable sharing of water project costs between Federal and non-Federal interests: options are presented for revising the myriad laws, rules, and formulas which establish the percentage of project costs that must be financed by or recovered from non-Federal project sponsors and beneficiaries.
- Enhanced Federal-State relationships: Presidential actions are presented to increase cooperation between Federal and State water resources agencies in the planning and management of water programs and projects, and to resolve disputes over State water laws, Federal reserved water rights, and Indian water rights.

VIII. SPECIFIC REFORM
PROPOSALS

VIII. SPECIFIC REFORM PROPOSALS

The following 5 sections present the specific reform proposals. They fall in these general areas:

- Improvements in the water project planning process
- Water conservation initiatives
- Improved environmental protection
- Cost-sharing for water projects
- Enhanced Federal-State cooperation in water resources management

Consensus exists on most of the proposals, but options and disagreements are presented on several important issues:

- Irrigation water pricing to achieve conservation
- Municipal and industrial water pricing to achieve conservation
- Cost-sharing for water projects
 - a. overall cost-sharing concept
 - b. treatment of SCS projects
- Assistance to States for improving water rights systems

IX. PLANNING AND
REVIEW PROCESS

A. Principles and Standards

The Principles and Standards (P&S) were promulgated by the President in 1973 after recommendation by the Water Resources Council to provide consistent directions to Federal water project and program planning. The P&S establish Federal planning objectives, a plan formulation process, and guidelines for the computation of benefits and costs. However, in many instances, benefit and cost calculations are inconsistent or inaccurate because agencies do not interpret the guidelines correctly, or use inappropriate or outmoded data or estimation techniques. As a result, projects are often portrayed as being economically justified under current standards when they are not.

Although we considered recommending a comprehensive revision of the P&S, we agreed that this was not essential and could evoke the accusation that you were changing the rules in mid-stream, unless all currently authorized projects are exempted from the new P&S. Instead, we recommend that you reaffirm the current P&S, require that water conservation and non-structural alternatives be explicitly provided for in the implementing procedures, and direct that certain improvements be made in P&S application and specificity to obtain more consistent and precise implementation by the affected Federal agencies. This can be done through the following actions:

Recommendation:

1. Direct the Water Resources Council, to: (1) evaluate current agency practices for making benefit and cost calculations, and (2) publish a new planning manual to ensure that benefits and costs are estimated using best current techniques and calculated accurately, consistently, and in compliance with the P&S and other economic evaluation requirements. The manual would supplement the P&S. OMB, CEQ and the Domestic Policy Staff would monitor this activity and provide guidance as necessary.

The new benefit/cost procedures should eliminate double counting and inclusion of benefits that are inconsistent with Federal policy or sound economic rationale. The WRC should make recommendations to you regarding the computation of benefits and costs as set forth in the P&S.

Also take
immediate steps
to enforce
existing law -

Particular attention should be given to the following items: benefits attributed to protecting future development in the floodplain; surplus crop benefits; navigation benefits; flat water recreation benefits; extended project life; area redevelopment benefits; the appropriateness of calculations for ability to pay (reclamation projects); whether benefits to charter boats should be defined as commercial navigation; uncertainty and risk of cost and benefits; least cost alternative analysis; consideration and display of engineering uncertainty; market value of vendible project outputs; determination of project design flood; the appropriateness of maximizing net benefits versus maximizing benefit/cost ratios under budget constraints; the assessment and consideration of costs of elimination of farmland, wetlands, wildlife habitat, and timberland.

Agree ☒

Disagree ☐

(Consensus)

2. Direct the WRC to prepare appropriate language for the integration of water conservation into the P&S as a component of both the economic development and environmental quality objectives.

This action should insure greater consideration of conservation for all projects and programs subject to the P&S.

Agree ☒

Disagree ☐

(Consensus)

3. Direct the WRC to take appropriate action to require the preparation and inclusion of a primarily non-structural plan as one alternative whenever structural project or program options are to be considered.

This alternative plan should incorporate a combination of non-structural or demand-reducing measures which could feasibly be employed or adopted to achieve the overall project purpose. Such measures should not be limited to those which the agency of the Federal government could implement directly under present authority but should include floodplain management techniques (such as zoning), pricing policies, ground water recharge, and other measures.

Agree ☒

Disagree ☐

(Consensus)

shall you be satisfied?
concerned about the

Earlier - even partial guidelines
can help us with
FY '80 budget.

We estimate that 9-12 months would be required to carry out the above directives. The new P&S manual would be available for the FY 1981 budget cycle. The guidance developed pursuant to these recommendations would be made applicable to all projects (and separable project features) not yet in the construction phase at the time the guidance is adopted by WRC.

B. Discount Rate

The reaffirmation of the Principles and Standards without a change in the present discount rate formula and planning objectives as prescribed in the Water Resources Development Act of 1974, P.L. 93-251, Section 80 (a) will probably be acceptable to most members of Congress, except those members of the public works committees and some others who have pressed for inclusion of "regional development" and "social well-being" as planning objectives.

The issue of the discount rate is controversial, however. Although the current discount rate is near 7% (based on the yield rate on long-term Treasury bonds) many projects authorized in the past were "grandfathered" by the Congress at extremely low discount rates.

Environmentalists would prefer that water project cost-benefit ratios be calculated at the opportunity cost of private capital (about 10%). They are particularly concerned about the "grandfathered" projects. You personally stated your concern about this problem during the water projects review last year.

Economists disagree over the proper rate to apply to these projects. There are theoretical bases for rates ranging from about 3 to 10%.

Congress has taken a strong interest in the discount rate, and would be unlikely to raise it even if a legislative proposal were made, especially with respect to the older projects calculated at very low rates.

In summary, the current rate appears to be reasonable, and a futile attempt to modify the "grandfathered" rate does not appear to warrant creating the likely controversy.

Agree ✓ Disagree _____
(Consensus)

[Handwritten signature]

C. Presidential Project Selection Criteria

In the water project review last spring, you established a set of criteria to be used in selecting projects for Administration support. While there was disagreement on the appropriateness of the particular criteria, there was agreement that whichever criteria were to be used should be, (i) relatively fixed so as to offer a degree of predictability, and (ii) publicly enunciated.

Many of the reforms you will announce will also function as project selection criteria. However, not all of the reforms will take effect immediately (particularly with respect to FY 1979 and FY 1980 new start proposals). Also, there are additional project selection considerations that need to be introduced into the process.

Your 1979 budget states that you will consider recommending some new project construction starts for 1979 funding after completion of this policy review. Also, if the normal pattern is followed this year, you will be deciding whether to approve a public works appropriation bill containing Congressionally added new starts, and an omnibus bill authorizing construction of a number of previously planned projects.

For all of the above reasons, we have prepared a set of criteria for your use in selecting projects that qualify on policy grounds for your support. These criteria would be applied to all projects including the current backlog when presented to you for decision. Should you decide to use them it is a certainty that they will be made public to explain why certain projects were or were not endorsed.

It is possible that there may be projects that warrant your support that do not meet these criteria and public awareness of the criteria could reduce your flexibility. Nevertheless, we feel that they should be publicly enunciated, in view of your stated commitment to make your ground rules known.

Specific Public Criteria

You would prescribe the following criteria:

1. Projects should have net national economic benefits (direct B/C ratio greater than 1 to 1) unless there are environmental benefits which clearly more than compensate for any economic deficit. Net adverse environmental consequences should be significantly outweighed by economic benefits. Generally, projects

- with higher B/C ratios and fewer adverse environmental consequences will be given priority within the limits of available funds. ✓
2. Projects should have widely distributed benefits. ✓
 3. Projects should stress water conservation and appropriate non-structural measures. ✓
 4. Projects should have no significant safety problems involving design, construction or operation. ✓
 5. There should be evidence of active public support including support by State and local officials. ✓
 6. Projects will be given expedited consideration where State governments assume a 10% share of costs over and above existing cost-sharing (see p. 35). ✓
 7. There should be no significant international or inter-governmental problems. ✓
 8. Where vendible outputs are involved preference should be given to projects which provide for greater recovery of Federal and State costs, consistent with project purposes. ✓
 9. The project's problem definition, environmental impacts, costs and benefits should be based on current conditions (i.e., planning should not be obsolete). ✓
 10. Projects should be in compliance with all relevant environmental statutes. ✓
 11. Mitigation of fish and wildlife damages should be provided concurrently and proportionately with construction funding. ✓

Agree ✓
(Consensus)

Disagree _____ 

D. Independent Water Project Review

No entity other than the construction agency itself now effectively monitors water project planning to ensure consistency and accuracy of benefit/cost calculations and compliance with relevant statutes, regulations, or procedures.

An entity is needed to provide an impartial review of all water projects during the planning phase to assure technical compliance with Principles and Standards and related laws and other requirements. OMB currently conducts project reviews as part of its budget and legislative review function.

Because of its fiscal responsibilities to the President, the OMB is perceived to have a bias against budgetary increases and is not policy neutral. Also, its limited staff precludes a thorough review of the underlying assumptions of benefit-cost calculations on each individual project report.

Recommendation:

We recommend that an independent review function be established by Executive Order, and located within the Water Resources Council pending further organizational recommendations from the Reorganization Project.

You would assign the WRC responsibility to review pre-construction plans of the Corps of Engineers, Bureau of Reclamation, Soil Conservation Service, the Tennessee Valley Authority, and the other relevant Federal agencies to determine the consistency of those plans with (i) established planning procedures and manuals, including the P&S, and established benefit/cost calculation and estimation procedures; and, (ii) other Federal laws and regulations relevant to the planning process.

The WRC would report to the agency heads and if necessary the Executive Office of the President on compliance of pre-construction plans with established requirements and procedures. It would also examine the record of project development to ensure there has been adequate opportunity for public comment and consideration of public views. We recommend the review of each project be completed within 60 days. A WRC review would be required prior to agency recommendation to OMB for construction funding. This review would help to reduce delays now caused by administrative and courtroom challenges brought during the construction phase.

It would also serve to assure that the other planning and cost-sharing reforms that you select are properly implemented. The function should be established as soon as possible, and should be operational in time for the 1981 budget cycle. Together with the P&S manual, the function will provide an essential screen for reviewing projects in the current backlog.

The vesting of such a function in WRC would require an increase in personnel -- approximately 30 persons. The Office of Management and Budget would retain the responsibility of advising agencies of the relationship of project plans to the program of the President wherever such plans are involved in a legislative process.

Agree ✓

Disagree _____

(Consensus)

X. CONSERVATION

For each of the 106 watershed subregions in the U.S., water consumption^{1/} and supply data were analyzed to compare 1975, 1985 and 2000 use levels with surface and groundwater availability. The major findings include:

- A severe water shortage problem now exists in 21 subregions located mainly in the Central Plains States and Southwestern States as shown in Figure 1. A potentially severe shortage problem is projected to occur in 18 regions located mainly in Northern Plains States, Rockies and Northern California by the year 2000, if projected growth in consumption occurs as shown in Figure 1.
- Data on urban problems are very limited. Neither the number nor the severity of these problems is well-known. However, some of the Nation's medium and large sized cities will likely experience substantial increases in demand for water, which can only be met at very high cost, since readily available water sources of sufficient quality and quantity have already been developed.
- Other subregions (67 out of 106) do not have either a current or a projected region-wide water shortage, except for certain urban areas. Though consumption of surface water rarely exceeds 5 percent of average annual regional stream flow, in a number of large urban areas withdrawals sometimes approach or exceed reliable supplies.

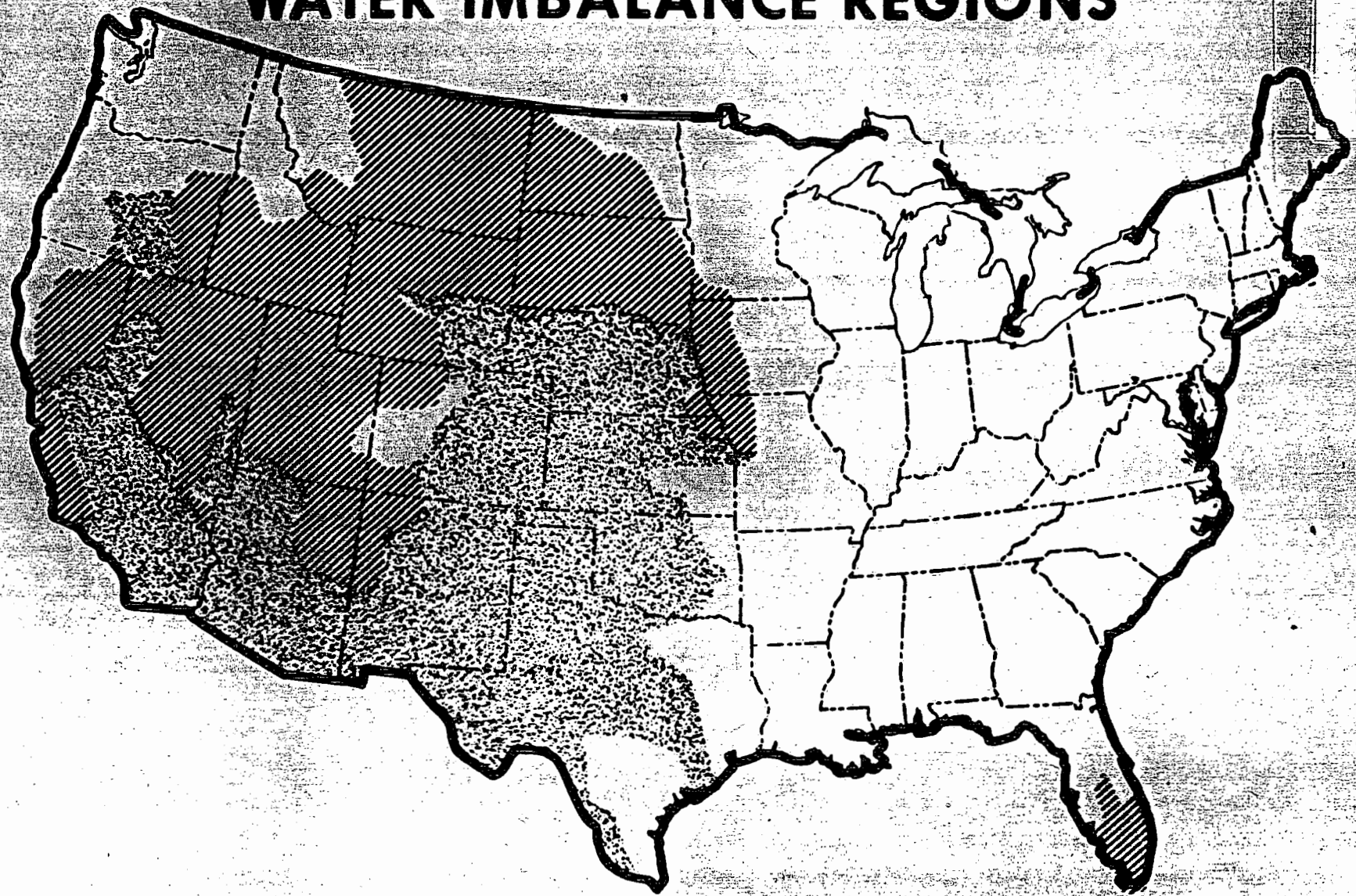
Further information on these problems is summarized as follows:

- The 21 subregions which already have serious imbalances in water supply and demand cover 28 percent of the U.S. land mass and include 13 percent of the population. Over 90 percent of the water consumed in these areas is used by agriculture, mainly for irrigation. In most cases, over half of this water is being consumed to grow livestock feed which includes grains, hay, alfalfa, and pasture.

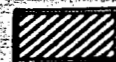
^{1/}Water consumption is that portion of a withdrawal which is not returned to the source. To illustrate, a city may withdraw 1,000 gallons from a stream per day but return 800 gallons. Actual water use or consumption would be 200 gallons. Not all water consumed is lost for further useful purposes; e.g., groundwater pumped for municipal use may enhance streamflows.

- In many parts of the subregions, farmers and other water consumers are drawing upon a fixed stock of groundwater, in effect mining a resource which either cannot be renewed or can be replaced only at a very high cost. Such groundwater mining is most prevalent in the Texas High Plains region, the lower Colorado, the Great Basin in Nevada and Utah, and parts of California.
- Surface water accounts for about two-thirds of the water consumed in the subregions having a shortage problem; groundwater makes up the remainder. Given the accelerating depletion of groundwater in many areas and the fact that groundwater can be replenished only by surface supplies, surface water must play a key role in meeting the future needs of water-deficient areas.
- At the present time, about 40 percent of the surface water diverted for irrigation in the 17 Western States is supplied by Federal projects constructed by the Bureau of Reclamation.
- The areas where the imbalance of water supply and demand is expected to become a serious problem by the year 2000 account for 20 percent of the U.S. land mass and 9 percent of the population. In only one of these subregions does agriculture consume less than half of the total water consumed. If present trends continue, major imbalance problems will occur in the 1990-2000 time frame. By changing water consumption growth trends over the next 5-10 years, we can lessen the need for new water projects.
- Urban water consumption represents less than 6 percent of national water consumption. Urban water consumption has increased 13.5 percent between 1970 and 1975 for the Nation, while populations receiving urban supplies have increased only 6 percent. The result has been seasonal or short-term water shortages in certain urban areas outside the western states such as Boston, Washington, D.C., and Atlanta. In these areas the problem is often not lack of water in the subregion; it is the high cost of constructing the supply system.

WATER IMBALANCE REGIONS



CURRENT PROBLEMS



FUTURE PROBLEMS

On a Nation-wide basis the 17 western States consume about 85 percent of all water consumed in the U.S. Of this amount 90 percent is for irrigation. In other parts of the country, a much smaller amount of water supplies are consumptively used although water withdrawals are substantial. Thus, in the West, 85% of the Nation's consumption comes from 40% of total water withdrawals. The rest of the country accounts for 60% of the withdrawals but 15% of the total consumption.

Each region and corresponding subregions have different water problems (e.g., shortages, quality, flooding) and therefore, require a different mix of solutions. In one region, for example, an intensive water conservation effort may be the best approach while in others a combination of water supply measures coupled with conservation measures may be desirable. While States can and should play the major role in water management, watershed regions cross State boundaries and affect a number of States.

We recommend a set of proposals to encourage conservation including pricing, technical assistance and Federal program reforms designed to help alleviate the problems.

A. Conservation Pricing for Federal Projects

The options which follow provide different ways of increasing the price of vendible products and services such as electrical power, agricultural, industrial, and municipal water supply from existing and future Federal projects to encourage conservation in the use of these project outputs.

1. Pricing of Irrigation Water

Forty percent of the water used for irrigation in the water-short areas comes from Federal projects. There is a wide disparity between the price of water from Federal projects and the cost to the Federal Government of supplying it.

For example, farmers who obtain irrigation water from the Bureau of Reclamation, Central Valley Project in California, pay from \$3.50 to \$7.50 an acre foot. The rate for the Westlands Water District within this project has recently been raised to \$14.50 per acre foot. Other farmers who obtain irrigation water from the California State Water Project, in close physical proximity to the CVP in many cases, pay about \$22 an acre foot. The cost of the water from the Federal project is \$15.80 an acre foot which includes capital cost, operation and maintenance, and the cost to the Federal Government of providing energy for pumping but no interest.

The major cost differences between Federal and the California water projects are that the State charges full cost including interest for the water and applies no acreage limitations, while for Federal projects there is a 160-acre limitation and less than full costs are recovered, including no recovery of interest.

We agree that there is need to address this water rate question in a positive way. The following options provide alternative means for addressing these disparities.

Option a: Strict Application of Present Requirements
Including Rigorous Ability-to-Pay Calculation
and Review of New Contract Terms Each Five Years.

You would direct the Secretary of the Interior to audit all major Bureau of Reclamation projects to establish the financial condition of each project and to determine actual operation and maintenance costs (similar to recent Central Valley Project audit). He would:

- continue the recently-instituted practice of requiring that all new contracts include a provision calling for recalculation and renegotiation of water rates every five years;
- add provisions to recover operation, maintenance and replacement costs when long-term contracts expire (typically 40-year contracts) and are renegotiated or earlier where existing contracts have adjustment clauses;
- assure the recovery of a more appropriate share of capital costs under a more rigorous interpretation of "ability to pay" on which repayment arrangements are currently based. (This requirement is currently provided by statute).

These are reforms of existing and new projects which would of necessity be phased in over a period of time. Ultimately, major water savings would accrue. This proposal will be controversial among the affected irrigators.

Recommended by Interior and OMB.

Option b: Apply Option a above to Existing Projects, and set Prices to Recover All Costs for New Projects Not Yet Authorized at Treasury Borrowing Cost.

This Option adopts Option a. for the pricing of irrigation water from existing Federal projects. However, for irrigation projects not yet authorized (categories D and E on page 13), Option b would establish the principle of full-cost recovery of all State and Federal investment costs directly from irrigators.

You would direct that irrigation water from all Federal projects not yet authorized be priced so that at a minimum, all operation and maintenance costs and all capital costs of the irrigation purpose plus interest at the Treasury borrowing rate are recovered directly from irrigators. If irrigators are unable or unwilling to pay such prices, the project purpose should be eliminated.

This option would constitute a decision that for new irrigation projects, the high level of subsidy provided in the Reclamation program is no longer appropriate in view of water conservation and cost recovery goals. Federal investment in future irrigation projects would be limited to areas where financing at the Treasury borrowing rate is sufficient subsidy to make irrigation economically feasible. Very few new Reclamation projects would likely be authorized under this option. By proposing to curtail sharply subsidies for new Reclamation projects, this option would be controversial in the West and could become a major political issue. The Administration has endorsed continued subsidies for existing irrigation projects if acreage and residency requirements are met.

The purpose of this Option is to establish more clearly the principles of water conservation, economic efficiency, and cost recovery from beneficiaries for future Federal involvement in irrigation projects. This Option would discourage the development of new projects in areas where irrigated agriculture would not otherwise be financially feasible. The impact of Option b would not be felt in the near future because it would apply only to new authorizations.

Recommended by CEQ.

Decision:

Option a - Strict Application of Present Requirements Including Rigorous Calculation of Ability-to-Pay and Every-Five-Years Renegotiation Provision in All New Contracts.

Recommended by Interior and OMB.

Supported by Eizenstat, Wexler

Option b - Apply Option a Above to
Existing Projects and Direct
That for All New Projects the
Prices Be Set to Recover Full
Costs With Interest at the
_____ Treasury Borrowing Rate

Recommended by CEQ.

2. Pricing of Municipal and Industrial Water and Electric Power

Municipal and industrial (M&I) water supply is generally provided under the terms and conditions of the Water Supply Act of 1958 which authorizes storage for these purposes in Federal reservoirs built primarily for flood control, irrigation, and hydro-electric power. Thus, the Federal responsibility for developing M&I water supply is primarily as an adjunct to other major Federal purposes. However, in some areas because of the prominence and scale of Federal reservoirs for other purposes and through special authorizing legislation, the Federal role in supplying municipal water has been significant. Examples are the Southern Nevada aqueduct from Lake Mead (Hoover Dam) to Las Vegas, and the Central Arizona project now under construction.

The 1958 Act requires repayment within 50 years of all the Federal costs of M&I water supply including capital, operation and maintenance, and interest at the statutory rate established by the 1958 Act (this rate is the average interest rate on Treasury securities with 15 year or longer maturities calculated at the time construction begins). However, no payment of the costs attributable to future water supply is required until such supply is first used and no interest on the cost of such future supply is to be paid until such supply is first used; except that the interest free period shall not exceed 10 years. Water supply storage for future use is limited to 30 percent of total project costs.

a. Recovery of All Costs at the Present Statutory Requirements

The repayment requirements for municipal and industrial water and for electric power should be left unchanged from the present statutory provisions. However, the appropriate Federal agencies in negotiating new municipal water supply contracts should require the municipalities to develop a water conservation program. These Federal agencies should also provide technical assistance in developing such programs in conjunction with the contracts.

Contracts for industrial water directly with industrial firms should also be on the same payment basis as the statutory requirements. Negotiations for these contracts must include provisions for water use efficiency and water conservation. The Federal agencies must maintain close technical monitoring of these water use provisions.

No change is proposed in the repayment requirements because the statutory provisions approximate full recovery of the Federal costs involved now.

✓ Agree Disagree
(Consensus)

- b. Provide States With the Option to Establish Water Supply Rates to All Users Above Full Federal/State Cost Recovery on New Water Projects.

Under this option, the Federal Government will provide the States with an opportunity to require users to pay rates in excess of full recovery of Federal/State costs including interest on new water projects. This authority would be designed to give States the option to require conservation pricing above cost recovery. If the authority were used by States, the revenues generated exceeding full cost recovery would be returned to the States for their use for water resource and conservation purposes. Where possible under State law that authority would be provided by the Governor. The Governor would decide whether to use it as well as deciding the price level for water. This would be done when the project is being proposed to insure that water users of proposed projects are aware of pricing criteria at the onset of the project. This novel idea could be used in achieving conservation by the States rather than the Federal Government, thereby providing flexibility in letting the States take action to solve their problems.

This proposal is supported by OMB and CEQ. Interior opposes it. While they agree with the concept, they believe it might be perceived as putting undue pressure on the States.

Agree Disagree
(OMB, CEQ, DPS) (Interior)
B. Modification of Federal Programs

*What do
Governors think?*

1. Federal Technical Assistance

Modest expansion of existing Agriculture, Interior and HUD programs would provide technical assistance targeted to water-short areas, both agricultural and urban.

A total of \$15 million annually would be provided. Agriculture and Interior would provide technical assistance to irrigators through existing programs. HUD's urban extension pro/ram would provide technical assistance to water-short urban areas as an eligible function under existing programs.



Agree

Disagree

(Consensus)

2. Modification of Federal Agricultural Programs

USDA and Interior agricultural assistance programs provide subsidized loans and other assistance that lead to increased water consumption, even where water shortages exist. For example, the Federal government now finances wells which increase groundwater mining of depleting aquifers and irrigation system expansion in water-short areas.

Although water conservation is an element of these agricultural assistance programs, insufficient emphasis has been placed on this aspect, resulting in Federal actions which exacerbate water shortages.

Recommendation

Agriculture and Interior are currently examining these programs to-determine how water conservation can be effectively emphasized in their respective programs. In many cases, it may be appropriate to provide Federal assistance in conjunction with or in order to accomplish more efficient water use. In some cases, it may be appropriate to withhold funding for activities which aggravate severe problems.

Bureau of Reclamation and USDA assistance programs should be administratively modified to avoid overextension of irrigation and distribution systems in water-short areas. For example, loan assistance could be made contingent on implementation of conservation measures, or could be disallowed where further development is intended to bring new land into production or to convert cropping patterns to more water-intensive crops, thereby exacerbating significant water problems.

These actions could be extremely controversial among farmers in water-short areas, particularly if poorly structured or carelessly presented. If coupled with technical assistance for water conservation, and exceptions for hardship cases and cases where there has been reliance on expected assistance, a carefully phased-in program could lead to the consideration of water conservation as an alternative to increased consumption in these water-short areas.

We propose that you direct Interior and Agriculture to analyze these programs and take appropriate steps to encourage water conservation and to remove disincentives to conservation.



Agree

Disagree

(Consensus)

3. Modification of Federal Housing and Community Development Programs

We recommend that you direct Federal agencies to do the following:

- Agriculture, Commerce, and EPA should modify financial assistance programs for municipal water supply and sewer systems to require appropriate community water conservation programs as a condition of loans and grants.
- HUD, Agriculture and VA should modify housing assistance programs to require use of water reducing technologies in new buildings as a condition of receiving assistance.
- GSA, in consultation with affected agencies, should implement measures to encourage water conservation at Federal facilities. A goal would be established and each agency having facilities would be required to comply.
- Other Federal departments, as appropriate, should review programs and policies for consistency with water conservation needs.



Agree

Disagree

(Consensus)

C. Assistance to States

A number of water conservation initiatives can best be accomplished by the States. Federal financial assistance to States is proposed as part of a consolidated State grant program proposed on page 42 of this paper, in the section on enhanced State-Federal cooperation.

XI. IMPROVED ENVIRONMENTAL PROTECTION 32

In addition to the improvements in the planning process mentioned above (e.g., reaffirmation and strengthening of the environmental quality objective, planning for a non-structural alternative, and providing for WRC review of agency benefit and cost estimates), the following steps should be taken:

- A Presidential directive to the concerned agencies to insure timely compliance with the Fish and Wildlife Coordination Act and the Historic Preservation Act and other appropriate statutes. Compliance reports to OMB as part of the annual budget submissions and to Interior for monitoring of agency compliance procedures also would be required. This action will guarantee that the agencies do more than pay lip service to these statutes. This action is strongly supported by environmental organizations and can be taken administratively.
- A Presidential directive to agency heads instructing them to include designated funds for environmental mitigation in all project construction appropriation requests, and requiring funds to be spent concurrently and proportionately with construction funds throughout the life of the project.

To improve flood protection through nonstructural means, we recommend that you:

- Require the Director of the Water Resources Council to report to CEQ, OMB and the Domestic Policy Staff the findings of its periodic evaluation of agency compliance with Executive Order 11988. This order attempts to reduce flood hazards and protect floodplains from unwise development by Federal projects and programs. There has been inadequate follow-up to determine that agencies, through some 200 programs, are adequately complying.
- Direct the Secretaries of Interior, Commerce, Army and HUD to improve flood protection through non-structural means by directing use of existing Federal programs to enhance nonstructural flood protection, including land acquisition, where consistent with primary program purposes (Interior's Land and Water Conservation Fund, HUD's Community

Development Block Grant program, Commerce's Economic Development Administration program, and Army's Corps of Engineers general water resources responsibilities).

maybe

Allocate \$20 million in FY 1980 to implement the existing Flood Insurance Administration authority to purchase flood-prone structures and remove them from the floodplain rather than pay for repeated repair.

☒ Agree ☐ Disagree
(Consensus)

[Handwritten mark]

Cost-sharing reform is probably the most important single issue in water resources policy. The importance of this issue has been addressed over the years by a number of groups established to review Federal water programs, including the Hoover Commission in the late 1940's, and the National Water Commission in the early 1970's. Interest in this area was also expressed by the Congress in requesting a study by the Executive Branch on water policy in Section 80 of the Water Resources Development Act of 1974, P.L. 93-251. Although it is not a new issue, it has not been faced directly by any preceding Administration.

Cost-sharing policies for Federal water resource programs have been developed under a variety of different laws over a long period of time in piecemeal fashion. As a result, cost-sharing for projects of the Corps of Engineers, the Bureau of Reclamation, the Soil Conservation Service, and the Tennessee Valley Authority differ among agencies. However, except for some land and in-kind services, there is no appreciable "front-end" participation by non-Federal interests in the construction costs.

There are a number of reasons why cost-sharing reforms are needed:

- State financial involvement in project funding would increase the scrutiny of project proposals at the State level.
- There is, perhaps, no better test of the merits of a water resources project than the willingness of the beneficiaries to share in its costs.
- Inconsistent cost-sharing policies lead to "shopping" among agencies, and create situations where a project is supported not for its merit, but because the Federal government will pay the largest share of the cost.
- Cost-sharing rules that vary by purpose tend to distort project plans to minimize non-Federal costs rather than to optimize benefits.

- The present complex system for cost-sharing is cumbersome from an administrative standpoint and badly needs simplification.

In the course of our review, six major cost-sharing reform strategies were analyzed, ranging from an approximation of the status quo to a block grant that would provide the States with the means to develop and manage their water resources according to their own plans and priorities, and which would in effect drastically reduce or eliminate the Federal construction programs. Consideration was also given to 100 percent recovery of Federal financing of project costs through the marketing of project products and services.

The most important changes required are greater non-Federal cost contribution and direct State participation. At present, the States have little or no financial participation. Therefore, they have limited involvement in project formulation. The greater the State and other non-Federal participation in project funding, the more careful will be the choice of scale and design.

There is consensus on our part that the elimination of inconsistent cost-sharing rules is desirable. Reform in this area will require legislation, and chances of success in the Congress are limited. However, we feel that a cost-sharing proposal is essential to a credible water policy.

There is disagreement between Interior and CEQ on one hand and OMB on the other with respect to the degree of change and the amount of non-Federal front-end financing that should be required. Those differences are set forth in the two options which follow. Treatment of cost-sharing for SCS projects is presented as a separate issue.

Option 1: State 10% Front-end Financing and Increased
 Non-Federal Contribution to Flood Protection

A. Ten Percent State "Front-End" Finance

Interior, CEQ, and OMB agree that a State cash payment of 10 percent of the capital costs of each project should be required, except for Soil Conservation Service projects. This "front-end" commitment would increase State influence

in project planning and decision. The funding debate in State governments would assure vigorous examination of each project's merits. There is some indication that the governors would be agreeable to such an arrangement, provided their need for planning and conservation assistance is met.

A mandatory minimum State cash contribution would require new legislation by the Congress. However, incentives for voluntary State agreement to 10 percent cost-sharing could be created through an Administration commitment to expedited consideration for new project construction starts (included as a proposed Presidential criterion for budgeting projects, p. 20).

This action would have the following characteristics:

- The States would be expected to provide legally binding commitments for their 10 percent cash share of total project costs.
- The 10 percent State share would be paid concurrently and proportionately with the Federal contractual obligations for project construction.
- "In-kind" contributions of lands, easements and rights-of-way could not be credited toward this portion of the cost-sharing.
- All other procedures and rules including those on principles and standards, NEPA, cost-sharing, and operation and maintenance as modified by your policies would apply.
- States contributing 10 percent "front-end" financing would receive a proportionate share of project receipts above operation, maintenance, and replacement costs.
- This approach would be applicable to the programs of the Bureau of Reclamation, Corps of Engineers, and TVA. (Treatment of SCS projects is presented separately.)

This proposal would apply on a voluntary basis to authorized projects and separable units not yet under

construction. For projects not yet authorized, the proposal would be made mandatory, and this would require legislation.

B. Modification of Cost-Sharing for Flood Protection

In addition to the 10% State share for all projects, Interior and CEQ propose amending Section 73 of P.L. 93-251 to fix the additional non-Federal capital cost-share for flood control projects at 20% for projects involving either structural or non-structural measures, or combinations of both. Current law requires 20% cost-sharing for non-structural measures. Flood control benefits from reservoir projects are currently 100% Federally funded. For local structural protection projects (levees, etc.), local interests put up all lands, easements and rights-of-way, averaging 17% for urban protection and 7% for rural flood protection.

The proposed additional 20% capital cost-share could be any combination of cash and "in-kind" contributions (lands, easements, rights-of-way). Non-structural and structural measures would be subject to identical requirements.

Two fundamental problems with prevailing rules for cost-sharing were revealed by the WRC's Section 80 study: first, there is a great variation in the effective non-Federal contribution to Federal water resource projects, depending on the project purpose, responsible agency, and the specific project authorization. Second, certain major project purposes (flood damage reduction, irrigation and navigation) are subject to cost-sharing rules which result in exceedingly low non-Federal contributions.

Because these project purposes all have identifiable beneficiaries, it should be possible to recover a greater proportion of project costs from these beneficiaries, in addition to the basic 10 percent up-front State cash contribution proposed by Interior and CEQ. The conservation pricing recommendations should result in a significant increase in the share of irrigation costs paid by project beneficiaries; the Administration's legislative proposal for navigation system user fees should increase the non-Federal contribution to that project purpose. Thus, the only other major heavily-subsidized project purpose not otherwise addressed by these recommendations is flood damage reduction. We address this issue by this proposal.

The present low level of non-Federal cost-sharing for flood damage reduction encourages potential beneficiaries to promote structural flood control projects instead of largely non-structural floodplain management alternatives.

Actions A and B, which comprise Option 1, would raise the overall non-Federal capital cost-share for flood control purposes of projects not yet authorized for construction to 30%. Cost-sharing rules for other project purposes not specifically changed by other recommendations in this paper would not be affected.

Option 2: Joint Financing at Uniform 25 Percent Local Cost-Share

OMB recommends that the existing, patchwork cost-sharing arrangements be reformed by requiring that non-Federal interests finance 25% of the total capital cost of each project, regardless of project category or purpose. This 25% requirement would replace existing non-Federal contributions (such as land, easements, etc.). As in Option 1, at least 10% of the capital costs would be borne by the State and vendible outputs are priced as described in the section on conservation. At the discretion of the State, the balance of the non-Federal share could be distributed among beneficiaries and local governments or paid in full by the State.

- This requirement would be a cash contribution, and could not be met by in-kind contributions such as land, easements and services.
- These new cost-sharing arrangements would be made applicable to all authorized projects and separable features of projects not yet under construction on a voluntary basis and to all new authorizations.

100
strict

Factors to Consider in Assessing Options 1 and 2:

- Both Options would require a State decision to support Corps, TVA and Reclamation projects by requiring States to contribute 10% cash front-end financing (SCS projects discussed on pages 40-41).
- Both proposals are controversial, and Congressional action is unlikely in the near future.
- Based on discussions with a number of governors, Option 1 appears more likely than Option 2 to be acceptable to the governors and perhaps the Congress.

For
Concerned
about Army
Comments

- e) Is there
es) no way
to deal
with this?



Option 2 -- Joint Financing at Uniform 25%
Local Cost--Share Including State
Share of At Least 10% Front-end.

Option 3 -- Do not approve either proposal
at this time.
Recommended by Wexler.

Cost-Sharing Treatment of Soil Conservation Service Projects

All agree that the 10% State cash share proposed above would be impractical for SCS projects, which tend to be small and are based on a grassroots relationship between the Agriculture Department and local soil and water conservation districts. However, disagreement exists over whether the 10% cash share should be required at all for SCS projects.

Option a:

OMB and CEQ propose that the 10% cash share be required but that any non-Federal entity could pay it, thereby removing the need for State legislative action for each project. They feel this requirement is needed because:

- existing cost-sharing arrangements include lands, easements, rights-of-way and "land treatment" measures (contour plowing, etc.) which do not represent a significant financial contribution to projects; *true*
- many of the land treatment measures are never carried out, even if the project is built; *true*
- good farm management would include land treatment measures and should not be considered a contribution to the project; *true*
- while most SCS projects are small, they can involve significant stream channelization and dam construction and their adverse environmental impacts can be large; *true !*
- exempting SCS from cost-sharing increases may encourage additional SCS projects and encourage agency "shopping".

Option b:

DPS and Interior feel that the 10% cash cost share for SCS projects should not be proposed at all, but that administrative procedures and requirements should be tightened to insure that non-cash cost shares are not inflated.

They argue:

- Many beneficiaries of SCS projects are farmers and rural communities for whom a 10% cash cost-share, excluding in-kind contributions, would work a hardship.

- The SCS program, although relatively small (\$150 million annually) is active in every State. While there is virtually no chance that legislation for a 10% up-front SCS cost-share would be adopted, including SCS in the up-front cost-share proposal would broaden the coalition against cost-sharing reforms for the Bureau and the Corps.
- Reform of the calculation of in-kind contributions, enforcement of the P&S, and a firm approach to cost-sharing in agency procedures and on project-by-project basis can be accomplished administratively and represent the best real chance for reform.

Decision: Option a -- Apply 10% Cash Cost-Share Requirement to SCS Projects But Do Not Require States to Provide It.

Recommended by CEQ, OMB.

Option b -- Do Not Apply 10% Cash Cost-Share, but Tighten Up On Current Cost-Sharing Arrangements.

Recommended by DPS, Interior

*I'm not sure
that pricing is only
best approach to problem -
I know from experience
that many SCS projects are
designed to enrich private landowners
and seriously damage wild areas,
fresh water marshlands, streams
temperature & turbidity. What can we
do about this on nationwide basis?
I blocked these kinds of projects
in Ga. as governor.*

J

XIII. FEDERAL-STATE
COOPERATION

XIII. ENHANCED FEDERAL-STATE COOPERATION IN WATER MANAGEMENT

Several of the actions discussed above (expedited consideration of authorized projects for which there is State cost-sharing and greater predictability in Federal consideration of water projects) offer the potential of improving Federal-State cooperation. But such actions must be taken with an understanding of the sensitivity of the States to any perceived intrusion by the Federal government into areas which the States consider to be primarily their responsibility, particularly actions which might directly or indirectly affect State water rights. We have identified the following areas where the Federal government could take steps to improve cooperation and provide appropriate assistance to the States.

A. Assistance to States for Water Conservation and Planning

We have identified the need to provide assistance to the States to establish water conservation technical assistance programs and to increase existing State water planning programs. Funding is also proposed to help Western States (at their option) to modify and improve their State water rights systems in order to facilitate water conservation.

The following three components would comprise a State grant program:

1. Planning Grants

The States have strongly protested a perceived failure on the part of the Federal government to involve them more actively in decision-making on Federal water planning and to take adequate account of State plans in proceeding with Federal projects.

The WRC conducts a modest (\$3 million/per year) planning grant program to assist the States in conducting water resources planning programs and activities. The States maintain that this level of funding is inadequate and that the State matching share now far exceeds the Federal contribution.

We propose a substantial increase in this program -- to \$30 million annually. Such an increase would greatly facilitate the States' ability to conduct water resources planning and management programs.

The funds would be made available to the States as 50-50 matching grants on the following basis: half of the grant money (\$15 million) would be distributed as formula grants to the States consistent with Federal criteria (to be promulgated by the granting agency) to prepare water supply management plans and implementation programs which emphasize conservation. The other half of the money would be available to States on a merit and cost-effective basis, for any of the following specific purposes: to integrate water quality and water quantity planning and management on the State level; to further develop State water conservation plans and implementation programs; to assess water delivery system rehabilitation needs; and to develop programs to protect and manage groundwater and in-stream flows.

Is this possible?

We want to avoid just distributing money to the States without achieving effective planning activity at the State level. We would therefore recommend close monitoring and State adherence to the Federal program criteria.

Agree maybe
(Consensus)

Disagree _____

2. Technical Assistance for Water Conservation

Many water conservation actions will require information and technical assistance provided to the public at the State and local level. We propose that each State be funded to help establish technical assistance programs tailored to their own water conservation priorities. These funds would be used for implementation of programs.

Grants would be available to all States. \$40 million of the funds would be provided on a formula basis to the States. \$10 million annually would be made available to the States based on proposals at the discretion of the Secretary.

Agree maybe
(Consensus)

Disagree _____

3. Encourage States to Develop Efficient Procedures for the Sale of Water Rights Within a State

Under Western water law, water rights depend on the amount of water used, creating a disincentive for conservation. In many Western States, the process for selling or renting a portion of one's water rights under existing State law and administrative processes tends to be costly and cumbersome. Additional incentives would increase our ability to achieve irrigation water conservation in the West. To

provide an expedited low-cost process for selling or renting water rights most Western States would have to clarify, modify, or reform laws, regulations, or administrative mechanisms.

This proposal would provide \$20 million over a three-year period to help States which ask for assistance to establish or improve efficient mechanisms for selling or renting water rights. The program would provide up to \$2 million per Western State. These funds would be given to the States for:

- developing data and analysis to assist in changing State laws, regulations or procedures;
- completing an inventory of current appropriated water rights so that they can be easily identified and updated;
- developing administrative mechanisms to handle water sales within the States.

Options

- a. Up to \$7 million per year for three years with no more than \$2 million per State. States would be expected to pay much of the costs. The Federal program would be discontinued at the end of three years.
- b. Allow funds for this purpose from the Planning portion of the grant proposal, but do not highlight.

OMB and CEQ recommend Option a because they believe this would be a low-cost, high reform, non-threatening means of helping participating States.

Interior recommends Option b because it believes States are already taking this action without Federal assistance, the action might be misinterpreted as Federal meddling in State water rights, and the resulting controversy would tend to obscure the more fundamental reforms which have been proposed.

Decision

| | | |
|--------------|-----------|--|
| _____ | Option a. | Approve (OMB, CEQ) |
| <u>maybe</u> | Option b. | Include as allowable activity under planning grants, but do not highlight. (Interior, DPS) |

*What do governors think?
I have doubts that giving a state \$1-2 mil
for several different planning purposes will
be effective. Jim & Cecil have had practical
experience concerning this. Theory of specific amounts?
Duplicate EPA -*

B. Federal Cooperation with States to Resolve Groundwater Problems

Management of groundwater resources is essentially a State and local function although EPA has certain statutory responsibilities to protect underground water resources in conjunction with the States. However, the failure to establish laws and procedures in many areas has created problems which have resulted in calls for Federal water resource development. e.g., groundwater "mining" leading to the Central Arizona Project. These problems occur where Federally-funded surface water projects are proposed in areas where no effective State or local laws or procedures control acknowledged groundwater mining in the same area. In such cases, the potential of water from the Federal project can become a contributing factor to the continuation of such practices.

Recommendation:

To improve Federal cooperation with States with regard to groundwater you should:

- Make a statement of concern on this problem,
- Direct Federal water agencies to assess this problem as projects are planned, and
- Direct Federal water agencies to work closely with States and local governments to seek resolution of local groundwater problems.

Agree



Disagree



(Consensus)

C. Federal-State Cooperation Regarding Instream Flow Policy

Failure to protect instream flows jeopardizes recreation, water quality, aesthetics, and fish and wildlife habitat. Water management decisions have frequently ignored or given low priority to maintaining the instream flows. As a result, many streams, especially in the West, have become critically depleted and, at times, dry through appropriation of flows for traditional consumptive uses. Federal water programs, by placing emphasis on supplying water for agricultural, municipal and industrial purposes, has not always considered the need to leave water in the stream for instream uses.

Present Federal policy for new projects and those in the planning stage is to assess and establish the quantity of streamflow necessary to be assigned to maintain instream needs below proposed dams. Such requirements should be provided for in new authorizations. Project operations plans to carry out the flow requirements should be developed in close consultation and coordination with the States. For projects already constructed, the use of stored water for instream flow requirements is often not provided for.

To improve protection of instream flows, we recommend that you:

- Issue a statement of concern on this problem, reaffirming the Federal commitment to enhanced protection; in this connection, you should ask the governors to work with Federal agencies to protect the fish and wildlife and other values associated with adequate instream flows.
- Direct Federal agencies, working in cooperation with the States to improve, where possible, the operation and management of existing projects to protect instream uses. While not interfering with the responsibilities of the States, there are major opportunities for Federal water management agencies to set a strong example in recognizing legitimate instream flow needs. Authorizing legislation that now lacks provision for stream flow maintenance, and where commitments and economic feasibility permit should be amended to provide instream flows.
- Require that the Federal planning and technical assistance to the States (noted elsewhere) be available in part to address and correct for instream flow problems.

*all this
applies on
smaller scale
to SCS
projects*

Agree ☒
 (Consensus)

Disagree ☐

D. Technical Assistance in Planning and Gathering of Data

The Federal agencies with expertise in water areas should be directed to assist the States by providing technical assistance, water data and information on instream flow and groundwater withdrawals. These data will be useful to

States to managing minimum instream flow, groundwater and safe drinking water and other water quality programs (approximately \$15 million per year).

Agree ✓ . Disagree _____
(Consensus)

E. Federal Reserved Water Rights

Western States are fearful that large claims on water by the Federal government and Indian tribes will threaten existing water uses and prevent future growth.

The United States, as the original owner of the public domain in the Western States, by a statute enacted in 1866, authorized citizens in a manner recognized by local customs and laws to appropriate the waters of the public domain and divert them to areas where they might be applied to beneficial uses, such as irrigation, industrial, mining and domestic activities. A highly developed and complex system of State water law has developed, supported by numerous court interpretations. The quantity of an appropriator's right is determined by the amount of water he can beneficially use; the priority of his right as against other appropriators is determined by the date the water is first beneficially used or the date application is made for a particular use: first in time is first in right. This system is the heart of Western water law, and in most areas, more than the amount of water actually available has been appropriated, in priority order, under such systems.

Also -- and again by virtue of being the original owner of the vast public domain out of which the Western States were carved -- the United States from time to time has set aside large tracts of land for national parks and forests, wildlife refuges, and other uses. The law is settled that when the United States reserves a tract of land from the public domain for some Federal purpose, it also reserves sufficient water from sources pertinent to the reserved land to accomplish that purpose; the water thus reserved is the Federal reserved water right. The reserved water right is unlike an appropriative right in that the Federal government retains valid rights even if the water is not actually used at present; in other words, the "use it or lose it" principle does not apply to reserved rights. However, reserved rights mesh with appropriative rights in that they have a priority only as of the date of their reservation. Since the reservations often were made long ago, there are many areas where the unquantified rights of the United States are prior to that of most water users in the area. Although Federal reserved water rights can be quantified in water adjudication proceedings in State and Federal courts, relatively few reserved rights so far have been thus quantified.

The heart of the Federal reserved rights problem is that many water users, whose right to use water is junior to that of the United States, fear that water will no longer be available to them, should the United States choose to utilize the full quantity of its right.

For decades, the issue has remained unresolved, creating an atmosphere of uncertainty and controversy, and fostering less effective water resource planning and management than is often desirable. Extreme suggestions for resolution would include a general abandonment of Federal assertion of reserved rights on the one hand, or a comprehensive inventory and quantification initiative by a fixed deadline on the other.

Neither of these is deemed acceptable, but we do believe that Presidential initiative can end the period of inaction, and set a reasonable course for resolving many Federal reserved right problems in a manner sensitive to existing water users and States.

1. Federal Reserved Water Rights Pertaining to Public Lands

We recommend a Presidential directive which instructs Federal water agencies:

- to increase the level and quality of their attention to the identification of Federal reserved water rights, focusing particularly on areas where water planning and management will be improved, where the protection of Federal water uses is of highest importance, and where it is essential to reduce uncertainty over future Federal assertions of right. States and water users should be closely consulted as this is accomplished. This will cost \$150 million over 10 years.
- to seek an expeditious establishment and quantification of Federal reserved water rights consistent with the priorities set out, and this action should be accomplished primarily through administrative means, seeking formal adjudication only where necessary. Resolution of disputes involving Federal water rights should include a willingness to negotiate and settle such rights in an orderly and final manner, seeking a balance with conflicting and established water uses. Where adjudication is necessary, it should be actively pursued by Federal agencies to a speedy resolution.

- to utilize a reasonable standard, when asserting Federal reserved rights, which reflects true Federal needs, rather than theoretical or hypothetical needs based on the full legal extension of all possible rights. Agencies should develop procedures and standards for the purposes of this section, consulting with the Department of Justice as appropriate.

Agree _____ ? Disagree _____
(Consensus)

2. Indian Reserved Water Rights

Early in the policy review, at the request of Indian leaders, the Indian water rights issue was separated from the rest of the review. Leadership on the Indian water rights review was provided by the Assistant Secretary for Indian Affairs at Interior. The issue was subsequently reintegrated into the review during the latter part of the effort. Although the public process associated with this topic has not been as extensive as that for the rest of the topics, it has been adequate and has involved the Indian community and other key groups.

One major controversy regarding both Federal and Indian reserved rights is whether State or Federal courts ought to have jurisdiction in adjudicating these claims. As trustee for Indian water rights the Federal government has maintained that Federal courts are the proper forum for determining these rights.

Indian water rights are associated for the most part with Indian reservations. The Federal government holds these rights in trust for the tribes. When reservations were created, courts have held that the Federal government reserved, by implication, enough available water to meet the needs of the reservation (the Winters Doctrine).

Like Federal reserved rights, Indian water rights have not been quantified for the most part. States and non-Indian water users perceive these rights -- particularly in water-short areas -- as a threat because many of these rights pre-date other water rights.

It has been the policy of this Administration to encourage Indian and non-Indian water users to negotiate their water rights if possible, rather than litigate them. The Indian people will generally accept negotiation as opposed to

*against
intensive
lobbying
pressures
I'm not sure we
can prevent un-
warranted abridgement
of federal
rights.*

I agree

litigation if there is financial support from the Federal agencies to help them develop the water to which they are entitled. Therefore, we recommend the following:

- A statement of the Administration's preference that Indian water rights be negotiated rather than litigated where possible. *ok*
- A statement of Administration policy supporting litigation of Indian claims in Federal courts where negotiations are unsuccessful. *ok*
- To assist negotiation, and litigation if necessary, a BIA review of tribal water claims (to be conducted within the next 10 years, at a total cost of approximately \$150 million).
- A policy directive and Federal program formulation to increase the development of Indian water resources as an incentive to achieve quantification through negotiation.

Agree _____
(Consensus)

Disagree _____

*Same comment as
before - what have
Indians to gain from
this?*

XIV. POTENTIAL RECOMMENDATIONS FOR NEW STARTS 51

In your budget message, you informed the Congress that you would be considering potential budget amendments to initiate new starts on water projects when your review of Federal water policy was completed. We believe it is highly desirable that a limited number of such projects be selected and proposed for financing concurrently with your recommendations for policy reform. It is likely that a number of water projects can be supported, based on our review of a universe of potential starts. The precise number of projects and the individual projects selected are, of course, dependent on the kind of criteria you adopt for the interim between now and the time your recommendations are enacted by the Congress.

It should also be noted that the Congress will try to add new projects each year, and that they may seek to quickly add "new starts" before the new planning reforms are fully operational (the FY 1981 budget). You will probably be faced with difficult decisions on whether to veto both appropriation and authorization bills.

XV. IMPACTS OF THE RECOMMENDATIONS

52

The impacts of these recommendations on Federal water programs vary depending upon which categories of projects are affected. These recommendations apply to all projects not yet authorized (Categories D and E on Page 13). In order to achieve effective reform while ensuring that the recommendations can be feasibly implemented, we have tailored the application of each recommendation to a specific portion of the 1280 currently authorized projects. (Those in categories A, B, and C on Page 12). In particular, we focused on the backlog which is comprised of about 500 authorized projects not yet under construction and the separable features of projects that are under construction. (Those in categories B and C on Page 12) The backlog would cost about \$15.4 billion to complete.

The recommendations would:

- Apply the Presidential selection criteria to all projects in the backlog whenever a new start or other project proposal is presented to you for a decision. These criteria would also be used to try to dissuade Congress from starting funding for authorized projects that do not measure up. ✓
- Apply at the time the new planning process is in place (about the start of the FY 1981 budget cycle on a case by case basis when projects are presented for decision) the revised and strengthened planning and evaluation procedures to all projects and separable project features that are not yet in the construction phase. Other than separable features, this item exempts those projects reviewed last year. ✓
- Apply new cost-sharing policies to all projects not yet authorized as soon as legislation is enacted by the Congress. In the backlog, expedited consideration will be given to those projects where states volunteer to provide the 10 percent cash front-end financing feature of the cost-sharing reform. ✓
- Apply at the time the review function is in place (about the start of the FY 1981 budget cycle) the new independent review function of the Water Resources Council to all projects prior to their

earlier?

consideration for authorization, new construction starts, or other major project decision. For these projects, the review objectives would be:

- To ensure that the project was planned in strict accordance with the rules in effect at the time of authorization.
- To identify cases where the social economic and environmental assumptions and conditions on which the project plans were based are obsolete, and
- To call for replanning or reformulation as necessary.
- Apply the new conservation pricing system to all projects at the time of initial contracting, contract renewal or contract renegotiation.
- Apply improved environmental law compliance monitoring and environmental mitigation techniques to all projects for which a construction funding or other decision is requested.
- Apply improved Federal/State cooperation techniques regarding groundwater and in-stream flow protection to all projects.

In sum, the reform recommendations would have significant impact on the backlog and would ensure:

first, that any backlog project for which a new construction or major project decision is required will comply with the economic and environmental requirements that apply to that project;

second, that the project enjoys significant public support, including meaningful State government financial support;

third, that a substantial portion of the federal costs invested in the project will be recovered; and

fourth, that we have not created another "hit list".

The attached exhibit presents a summary of the budget estimates for the reform proposals in this paper.

These estimates are necessarily tentative and preliminary at this time, but we believe they are reasonable approximations of the likely budget effects over the next several years. We would, of course, refine the predicted budget effects to reflect any changes resulting from your decisions, and to obtain a more precise estimate based upon additional staff work.

| <u>Changes to the planning base:</u> ^{A/} | Budget Outlays (\$ in millions) | | | |
|--|--|-------------|-------------|-------------|
| | <u>1979</u> | <u>1980</u> | <u>1981</u> | <u>1982</u> |
| <u>Improved Planning and Review Process:</u> | | | | |
| Independent Water Project Review | +1 | +1 | +1 | +1 |
| <u>New Emphasis on Conservation:</u> | | | | |
| Federal Technical Assistance..... | +15 | +15 | +15 | +15 |
| Modification of Federal Programs | -- Unknown, but probably small budget impact -- | | | |
| <u>Improved Environmental Protection:</u> | | | | |
| Purchase of Floodplain Structures | -- | +20 | +20 | +20 |
| <u>Cost-Sharing:</u> | | | | |
| Interior/CEQ 10% State Requirement (Option I) . | -- | -5 | -15 | -25 |
| OMB Recommendation (Option II) | -- | -110 | -210 | -225 |
| <u>Enhanced Federal/State Cooperation:</u> | | | | |
| Consolidated State Grant Program | +87 | +87 | +87 | +80 |
| Technical Assistance for Streamflow and ground- water management | +15 | +15 | +15 | +15 |
| Review of Federal Reserved Water Rights | +15 | +15 | +15 | +15 |
| Review of Tribal Water Claims | +15 | +15 | +15 | +15 |

ANALYSIS OF POTENTIAL BUDGET COSTS -- 2

| | <u>1979</u> | <u>1980</u> | <u>1981</u> | <u>1982</u> |
|---|-------------|-------------|-------------|-------------|
| <u>New Construction Starts:</u> <u>B/</u> | | | | |
| Potential Starts | <u>70</u> | <u>210</u> | <u>350</u> | <u>490</u> |
| Totals Option I | | | | |
| Cost-Sharing | +223 | +373 | +503 | +626 |
| Totals Option II | | | | |
| Cost-Sharing | +223 | +268 | +308 | +426 |
| Totals Without Cost-Sharing | +223 | +378 | +518 | +651 |

A/ Budget impacts of reform actions not detailed in the table are either zero or would have impacts beyond the time-frame discussed.

B/ Assumes same level of new starts each year -- 1979-1982

We believe the policy reforms in the areas noted above provide a responsible and credible package of Federal actions that will offer the maximum potential of achieving significant reform. They would greatly improve the quality of Federal water resource programs, reduce waste, distribute costs more equitably, and provide the States and the Federal agencies with the positive incentives and tools required to conserve our scarce and valuable water resources.

The major features of these proposals can be summarized as follows:

Cost Sharing

We propose to: substantially increase non-Federal participation in the front-end financing of water projects, increase the pricing of vendibles and reduce the disparity among the cost-sharing requirements for various purposes.

Conservation

We propose to make conservation a major thrust of your water policy reforms through: a conservation pricing proposal which provides a positive financial incentive to help conserve water; targeted technical and financial assistance to States and farm operators; a new matching grant program; and strengthening of conservation activities under existing Federal programs.

Principles and Standards

The WRC will be directed to tighten the implementation of criteria for evaluating water projects costs and benefits, including environmental costs. This action would include requiring the preparation of a planning manual and development of nonstructural and conservation elements as part of the planning process. In addition, criteria have been developed for your use in selecting new project construction starts.

Review Board

The WRC -- an agency without a construction mission -- would undertake a technical review of water project reports to assure compliance with existing law, and to determine that benefit and cost measurements are valid.

Enhanced State Role

The States would be provided with additional planning assistance through grants, action would be taken to open up the Federal planning process to secure State participation, and steps will be taken to deal with the reserved and Indian water rights question that concern the West. We will give priority to projects where the States have a financial stake in front-end financing and will provide funds and technical assistance to State conservation programs. We believe those actions will give the States the kind of opportunity and recognition they have been requesting in their meetings with you, the Vice President, Secretary Andrus, and other members of the Administration.

This decision document, in an earlier draft form, was made available for review by the heads of the concerned agencies and their designees.

The agency views are generally in accord with the thrust of our proposals. In some cases we modified the draft to accommodate their views.

The ultimate responsibility for recommendations to you was assigned to us -- as heads of the Water Resources Council, the Office of Management and Budget, and the Council on Environmental Quality. Consequently, the recommendations are our responsibility.

For your benefit we have attached brief summaries of their major points as well as copies of their letters.

SUMMARY OF AGENCY VIEWS

Department of Energy

- Distinction should be drawn between WRC as a Federal agency composed of agency heads, and the Director of WRC, who is a subordinate federal official.
- Clarification of role of river basin commissions vis-a-vis the states in planning needed.
- Strongly endorse full cost pricing for power.
- Small hydro program mentioned on page 5 is a loan, not a grant.

Department of the Army

- Option 1 of the cost-sharing section (page 39) makes no progress toward consistency in non-Federal cost-sharing requirements.
- Army would like the same flexibility with regard to the 10% front-end requirement for its small and moderate sized projects as is provided SCS.
- Cost-sharing options no longer include the combination of O&M and capital costs which Army favors.
- The non-Federal contribution envisioned by both cost-sharing options is unworkable in some cases because of the disparity between project location and beneficiaries, as in the case of many navigation projects.
- Cost-sharing option 1, while expedient, is not the fundamental reform which is needed and will therefore not be acceptable to either the Congress or advocates of fundamental reform.
- Echoes DOE's observation about the WRC/WRC Director relationship.
- Fears that the schedule for implementing many of the reform efforts is too tight.

Environmental Protection Agency

- Much of the paper's effort to provide financial incentives to states is duplicative of EPA's ongoing activities. To this extent, they need more scrutiny by OMB.

I agree

Department of Transportation

- Strongly recommends revision of statutes detailing method for calculating transportation benefits from water projects.

Department of Agriculture

- In general, Agriculture concurs with the proposed reforms.
- Independent review board should await the reorganization of natural resources.
- Changing water pricing to recover full costs would not be prudent, especially with regard to small farmers. Any increase should be phased in.
- Favors grants to states for technical assistance, but feels \$20 million is "exorbitant."
- Concurs strongly with improving flood protection through non-structural measures, and the spending of \$20 million for re-locating flood-prone structures.
- Solidly in favor of increasing consistency in cost-sharing requirements.

Department of Housing and Urban Development

- Agrees with recommendations for new policies where HUD is specifically mentioned.
- Hesitates to support sharing revenues from sale of M&I water with states due to potential for abuse.
- Apprehensive about implementation of higher cost-sharing option (25%). Any increase should be phased in.
- Repeats previously mentioned distinction between WRC Director and WRC.



Department of Energy
Washington, D.C. 20461

APR 10 1978

The Honorable Cecil D. Andrus
Secretary of the Interior
Washington, D. C. 20240

Dear Mr. Secretary:

This letter is in response to your request for our review of the draft Presidential Water Policy Paper.

One of our important concerns is the apparent confusion on the role of the Water Resources Council's staff and Director as opposed to the Water Resources Council (WRC). This is especially evident on pages 18, 26, and 45, concerning, respectively, the independent project review board, the flood plain management program, and the identification of the WRC as an agency. It is important to assign these responsibilities to the Council and not to the Director.

In line with this problem is the intended role of the River Basin Commissions (RBC's) in basin planning vis-a-vis the enhanced State planning role described in Section XI - Enhanced Federal-State Cooperation in Water Management. It does not appear that these two planning responsibilities are compatible.

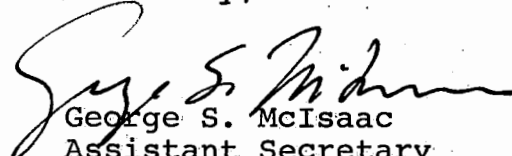
Another area of concern for Department of Energy (DOE) programs occurs in the discussion of Section VIII. New Emphasis on Conservation, A. Conservation Pricing, 2. Pricing of Municipal and Industrial Water and Electric Power. We strongly endorse Option 1 which would continue the present statutorily based full cost recovery principle for pricing hydroelectric power from Federal projects. The second option, which is insufficiently defined, might allow the States the option of increasing the electricity rates as well as water supply rates from the Federal projects. This would conflict with existing Federal Energy Regulatory Commission responsibilities as well as the statutory responsibilities for the Power Administrations.

Mention is made of the proposed Small Hydroelectric Development Program at existing dams on page 5 of the second section defining the issues. Currently, this program is strictly a loan program rather than a grant program as indicated in this paper. Additionally, funds for this program are not included in Section XIV., Analysis of Budget Costs. Since the existing Principles and Standards (P&S) are not to be modified, we assume that this means the small hydro program will not be subject to the P&S review.

It also appears that there are some inconsistencies in Section X. Cost Sharing. However, the general tone of this document is considerably improved over that reviewed by DOE on February 24, 1978. This is especially the case relative to the discussion on the Federal and Indian reserve water rights questions.

We appreciate the opportunity to review and comment on this Water Policy Paper. We also appreciate the consideration of our concerns from the previous draft of this document.

Sincerely,


George S. McIsaac
Assistant Secretary
Resource Applications



DEPARTMENT OF THE ARMY
OFFICE OF THE UNDER SECRETARY
WASHINGTON, D.C. 20310

10 APR 1978

Honorable James T. McIntyre, Jr.
Director
Office of Management and Budget
Washington, D.C. 20503

Dear Mr. McIntyre:

This letter transmits the Department of the Army's comments on what appear to be major problems with the draft Presidential decision memorandum on water policy reform. We have telephoned, separately to your staff, comments on a number of factual errors and ambiguities in the draft we were shown this morning.

Cost Sharing

With regard to cost sharing policy reform, I note that both Options 1 and 2 are significantly different from those presented in earlier documents we have reviewed, and commented upon, with recommendations on the option to be selected. Based on necessarily quick review, however, there seem to be some major problems with the options as stated in today's draft.

First, the development of cost sharing reform on the basis of composite or life cycle project costs has been confused if not lost. Indeed, only one reference is made to it in the discussion of Option 1 where on page 31 it is stated that "This option would raise the overall composite non-Federal cost sharing for flood control purposes to 30 percent." This statement, however, appears inconsistent with the one on page 29 where it is stated that "A State payment of 10 percent of the capital costs of each project should be requires (sic)."

As we understand option 1, for purposes other than flood control, the 10 percent State financing requirement would be in addition to existing cost sharing provisions, so no progress toward consistency in non-Federal cost sharing would be made in these purposes. Also of concern to the Department of the Army is the requirement -- for all projects except SCS projects -- that States themselves put up the required 10 percent financing. Where local governments have the ability to finance civil works projects, as they do in small and moderate sized projects, they should have the option of doing so.



Second, the requirement for a non-Federal contribution as envisioned in either Option 1 or 2 in the case of the inland navigation system appears unworkable; in many cases there is no relationship between the location of a project and the location of its beneficiaries. For this reason, the financing of inland navigation projects should remain the sole responsibility of the Federal Government, with levels of cost recovery through user charges consistent with national transportation policy.

Cost sharing Option 1 appears to be an expedient to increase State participation in the financing of water projects. But because it does not achieve the kind of fundamental reform which is so sorely needed, I believe it will not be acceptable to either the Congress or to advocates of fundamental cost sharing reform.

Option 2 on the other hand, is attractive aside from its failure to address O&M for non-vendibles (and thus to insure cost sharing reform based upon the concept of effective composite project costs) and, even more importantly, its failure to exclude inland navigation from the non-Federal financing requirement.

As to the time of applicability of new cost sharing policies, I believe it would be appropriate to exempt from the proposed policy those projects which, while not under construction, have binding agreements between Federal Government and non-Federal interests.

Independent Review Function

A second major deficiency of the paper is its confusion of the WRC -- a Council of agency heads, a number of whom head construction agencies -- and the Director of the WRC, who is the principal staff person responsible to the members of the WRC. This confusion is best evidenced by the following from page 26: "Require the Director of the Water Resources Council to report to CEQ, OMB and the Domestic Policy Staff the findings of its /sic/ ..." The decision memorandum appropriately assigns the preparation of a handbook and revisions to the P&S to the Council; it inappropriately assigns the Director of the Council the responsibility for review of individual agency projects. I do not believe that giving the Director a review responsibility is either consistent with the intent of P.L. 89-80, the Water Resources Planning Act of 1965, nor,

in fact, workable. If the Council is to have a creditable review function, it must do so as a Council, not via a Technical Staff divorced from its statutory responsibility to Council members. Yet, if this were done, under existing WRC by-laws, the review would not be "independent" as the paper suggests. I believe that the paper should offer the explicit option of assigning the review function to whatever entity emerges from the President's Reorganization Project review as the locus of the "policy function," and deferring implementation until that entity is designated.

Timing

A third issue concerns timing of implementation of recommendations to revise the planning process. It seems to us that the memorandum promises the President too much too soon in the areas of P&S revision, handbook publication and subsequent reflection of new policy and procedures in project reports. The incorporation of conservation as a component of the NED and EQ objectives of the P&S, and the implementation of the requirement to present non-structural alternatives in project plans under the P&S will not be easy tasks. The need for further thought on the proper role of conservation within the framework of the P&S is reflected in the lack of any clear definition in the water reform decision paper of "conservation." How, for example, should saving water be related to the efficient use of other resources -- economic or environmental? Similar difficulties can be expected with defining proper non-structural alternatives when structural solutions are recommended.

The decision memorandum implies that these tasks can be accomplished in nine to 12 months and that a WRC review of projects can be a part of the 1981 budget cycle. These schedules fail to reflect the complexity of the issues, the time required to introduce new procedures in planning reports, and the fact that there are, at any point in time, a large number of reports which have left field planning offices and are under review by the Executive Branch or Congress prior to their authorization.

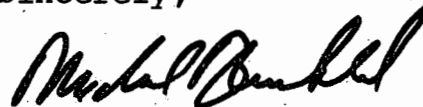
Presidential Project Selection Criteria

We support publication of the President's New Start criteria as a way of communicating to Congress and the public that the President's decisions on water projects are based on a clear and consistent rationale. However, I do not believe that assigning a funding priority to projects where there is a

State willingness to contribute 10 percent of project costs is a useful criterion for FY 1979 or even FY 1980 construction new starts. The biennial character of the budgeting process in many States, and the lateness of the date, preclude this.

I have necessarily focused in this letter on the major problems we see with the exposition of major issues and options. There are many recommendations in the paper with which we fully agree; conversely, there are some relatively minor ones which, in our view, need refinement. Given more time for review, we would be delighted to register agreement, qualified agreement, or disagreement with more of the specific items in the paper. But I hope this letter will be of use to you in finalizing the paper under the existing timetable.

Sincerely,

A handwritten signature in dark ink, appearing to read "Michael Blumenfeld", written in a cursive style.

Michael Blumenfeld
Deputy Under Secretary of the Army



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

APR 11 1978

OFFICE OF WATER AND
HAZARDOUS MATERIALS

Mr. Eliot Cutler
Associate Director for Natural
Resources, Energy and Science
Room 262, OE0B
Office of Management and Budget
17th and Pennsylvania Avenues, N.W.
Washington, D.C. 20503

Dear Eliot:

In compliance with the Office of Management and Budget's request of April 10, we have reviewed the second draft of the President's Water Policy Decision and would offer this general observation.

While we have no serious objection to some of the initiatives suggested here, much of the effort to provide financial incentives for broadened state participation in water planning and conservation is duplicative of ongoing activities which EPA is already fostering under the statutorily mandated water quality planning requirements of the Clean Water Act. The proposal to encourage water conservation through the provision of technical assistance to states and communities has a strong potential of being duplicative of efforts which EPA now has underway with the States through the 208 water quality planning program. Likewise, the specific purpose of the proposed increase in state water resources planning money coincide with many of the purposes which the 208 statewide plans are now being required to develop.

To the extent that these proposals have the potential of duplicating Federally supported planning efforts at the State and local level and unnecessarily wasting public money, we submit that they need to be more carefully scrutinized by OMB. We urge they be given careful evaluation before transmittal to the President.

Thank you for the opportunity to comment.

Sincerely yours,

Thomas C. Corling
Assistant Administrator



THE SECRETARY OF TRANSPORTATION
WASHINGTON, D.C. 20590

APR 11 1978

Honorable James T. McIntyre, Jr.
Director, Office of Management and Budget
Executive Office Building
Washington, D. C. 20503

Dear Jim:

I appreciate the opportunity for our Department to review the revised National Water Resource Policy decision document which has been prepared for President Carter.

Our Department is pleased to note that the concept of the use of sanctions in initial version of Section E, Federal/State Relationships, has been abandoned. In our February 21, 1978 response, we had expressed serious concerns about this concept.

Also in that response, we pointed out the potential requirement to amend Section 7(a) of the DOT Act concerning the criteria used in evaluating the navigation benefits of water resource projects.

My staff's review of the revised Presidential decision document reveals that, although stress is placed upon a requirement for more rigorous criteria for use by the Water Resources Council in project evaluation, no mention is made of the required revision of Section 7(a) of the DOT Act.

I strongly recommend that the required revision of Section 7(a) be included in the comments dealing with project evaluation criteria.

Sincerely,

Alan B. Gutman
for Brock Adams

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OFFICE OF
MANAGEMENT & BUDGET



DEPARTMENT OF AGRICULTURE
OFFICE OF THE SECRETARY
WASHINGTON, D. C. 20250

APR 11 1978

The Honorable Cecil D. Andrus
Secretary
Department of the Interior
Washington, D.C. 20240

Dear Mr. Secretary:

USDA officials have reviewed the April 10th draft of the Presidential options paper on water resources policy reform; we appreciate this opportunity to present our views on this subject. As you are aware, water is of incalculable importance to food and agriculture.

In general, the Department of Agriculture concurs with the proposed reforms, many of which were long overdue, such as:

- o Increased non-federal participation and consistency in cost-sharing
- o Pricing of vendibles
- o Conservation pricing
- o Tighter water project evaluation criteria
- o Nonstructural and conservation alternatives
- o Enhanced State roles
- o Identification of federal reserved water rights and establishment of such at reasonable levels
- o Identification of and negotiation for Indian water rights, accompanied by financial assistance for the development of those resources.

Our correspondence of February 23, 1978 set forth in detail our positions on the specific issues raised by the earlier draft of the decision document. We shall not reiterate those in this letter; we intend to focus only on 1) those issues which are newly raised or 2) those issues on which we find our position to be in opposition to those enunciated in the decision paper.

In connection with the proposed establishment of a Water Resources Council review board, we continue to believe that such a decision should be deferred until such time as the President's Reorganization Project has

been completed. Barring deferment, we support conceptually the creation of such an independent review board. However, we are concerned about the backlog which might result, especially in connection with the small watershed projects. Basically, the existing NEPA process is adequate to achieve the desired objectives.

USDA feels it is imperative to evaluate current and expected conditions and practices for improved benefit/cost analysis and consistency. Consistency would be furthered with reaffirmation of the Principles and Standards, as well as publication of the proposed manual.

In our opinion, the President would be well-advised to specify the water project review criteria in a public announcement. In this regard, we believe it would be beneficial to have net benefits accrue to the projects, but question the propriety of selection of projects in the order of magnitude of net benefits.

In connection with conservation pricing, we agree that water should be priced to encourage conservation, but we do not believe it is prudent to attempt to recover all costs, especially with regard to small farm beneficiaries, which the Department as a whole promotes. In general, however, we would favor the application of criteria based on ability-to-pay calculations and 5 year reviews of contract terms to existing projects. We would generally favor setting prices to recover operation and maintenance costs for new projects. We strongly feel that conservation pricing should be phased in, as the financial impact on farmers would be a heavy one were full-fledged implementation to occur immediately.

As mentioned earlier, we would favor Federal grants for technical assistance to states for the purpose of water conservation, as well as the encouragement of state water rights exchanges. However, our preliminary assessment of the analysis of budget costs reveals that the \$20 million expenditure for state water exchange encouragement in FY 1979 is exorbitant.

We agree that assistance should be provided only if adequate conservation plans are part of project proposals, especially in water-short areas; such conditions should apply to both loans and grants.

We concur strongly in the proposal to improve flood protection via non-structural means, entailing periodic evaluation of compliance with Executive Order 11988, agency compliance by means of nonstructural measures, and the spending of \$20 million in FY 1980 to implement existing Flood Insurance Administration authority to purchase and remove flood-prone structures.

As you are aware, we are solidly in favor of consistency in connection with cost-sharing, as well as increasing non-federal contributions to

capital costs, flood protection, drainage, and vendibles. At the present time, our small watershed projects do not receive any State Government financing, however; additionally, contributions by local sponsors frequently total more than the 25 percent minimum set forth in the proposed options.

We believe that all reforms should be applicable to new authorizations as well as to truly separable features of projects not yet under construction.

With regard to enhanced Federal-State cooperation in water management, we concur with the increasing of planning grants in States but believe this should be carried out over a period of years in order to allow states sufficient time to "gear up" to handle the increase.

As stated in our February correspondence, we concur with the need to resolve groundwater problems in conjunction with surface water planning, as well as with the need for attention to protection of instream flows; thus, we would favor federal planning and technical assistance to the States, as well as data gathering, for these purposes.

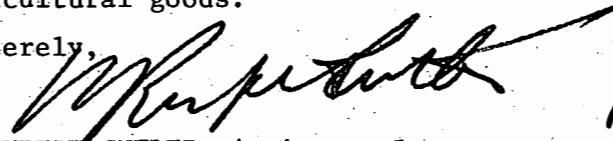
We agree that federal water rights should be identified, that disputes should be resolved administratively to the maximum extent feasible, and that identified rights should be reasonable--as opposed to the maximum possible.

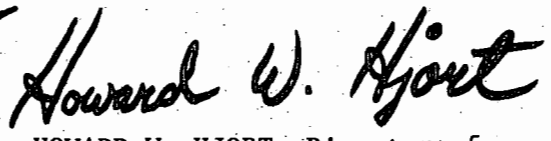
With respect to Indian reserved water rights, we concur with the desirability of negotiation of those rights, as opposed to litigation. We also view as desirable the proposed Bureau of Indian Affairs review of tribal water claims as well as increased financial assistance to develop Indian water resources. The Federal government holds Indian rights in trust for tribes and thus is morally bound to assist the Indians in achieving an equitable share of the nation's water resources.

Although we concur that recommendations for new construction starts should be limited, we strongly disagree with the suggested number of 5 to 15 new starts, especially in view of the fact that only 3 new construction starts (Big South Fork, Hartwell, Davenport) are mentioned in the analysis of budget costs. A limitation in terms of budget monies would be preferable to a numerical limitation.

We appreciate this opportunity to comment on the pending significant water policy decisions and trust that our comments will be incorporated as fully as possible into the final decision document. The impact of these decisions will touch every American, be that individual a producer or a consumer of agricultural goods.

Sincerely,


M. RUPERT CUTLER, Assistant Secretary
Conservation, Research and Education


HOWARD W. HJORT, Director of
Economics, Policy Analysis
and Budget

cc: Gus Speth, CEQ
Don Crabill, OMB

DRAFT

ADMINISTRATIVELY CONFIDENTIAL

Mr. Eliot R. Cutler
Associate Director
Natural Resources, Energy & Science
Office of Management and Budget
Washington, D. C. 20503

Dear Mr. Cutler:

This opportunity to review the latest water resources policy options and recommendations, although necessarily limited due to the tight schedule, nevertheless provided us with essential understanding of the potential impact and influence to be expected on HUD's programs. Specific reference to and application of the proposed new or changed water resources policy to our programs are reasonable and should contribute to the objectives as expressed and defined in the study. These proposals are:

1. New emphasis on Water Conservation.

- a. HUD, DOT, USDA and COE sharing \$15 million in grant funds for Federal technical assistance for irrigated farm and urban areas that are experiencing water shortages.
- b. HUD, USDA and VA modifying housing assistance programs to require the use of water reducing technologies in new buildings as a condition of receiving assistance.

We suggest that the policy emphasis on water conservation recognize the severe problems to be addressed in major, older, urban areas because of deteriorating water and waste disposal systems, the expansion of rapidly changing centers of growth and the movement of population in response to economic opportunities. Eastern cities such as, Boston, New York, Philadelphia, Washington, Atlanta, and many others are faced with multi-billion dollar problems of rehabilitating older systems, expansion of services to meet new growth, limits on available resources which can be developed or captured for redirected use. The policy statement should direct Federal support toward urban water management activities as well as water development from new sources. Support could be marshalled from existing programs of EPA, HUD, DOC and WRC for these purposes and coordinated with other Administration initiatives expressed in the President's Urban Policy Statement.

2. Improve Environmental Protection.

DOA, HUD, DOI, and DOC would improve flood protection through non-structural means. . .including land acquisition where consistent with primary program purposes.

- a. Use the Community Development Block Grants' funds for such acquisition where appropriate.
- b. \$20 million funded in FY-80 to FIA to implement existing Flood Insurance Administration authority to purchase floodprone structures and remove them from the floodplain rather than pay for repeated repair.

We hesitate to fully support the second option offered on Pricing of Municipal and Industrial Water and Electric Power which would allow states to establish rates to all users above the full Federal/State cost recovery on new water projects. It would seem that a potential could exist or develop for abuse of such authority and cause an unfair burden on some user sectors unless closely monitored and supervised under carefully defined standards.

We continue to be apprehensive also regarding the adoption and implementation of the higher cost-sharing option (25% for the non-Federal) share in support of water resource development. If adopted, transition to such requirements should be gradual and sensitive to potential disruption of essential services especially to distressed cities and rural areas.

Review and evaluation functions are proposed to be assigned to the Water Resources Council for:

1. Consistency and improved planning standards.
2. Agency compliance with Executive Order 11988.

The text should be revised in both cases and the assignment clearly made to the Council Members as the responsible body, not to the Director. Such assignment would be in keeping with the authority vested in the Members by P.L. 89-80 and preserve the independent character required to adequately perform such review functions.

I wish to compliment you and your staff for the clarity of presentation of the policy proposals and the concise statement of issues which they address. I hope they are favorably received and fulfill objectives set forth by the President.

Sincerely,

Yvonne S. Perry
Deputy Assistant Secretary-Designate